



**REVISED**

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

**Thursday, October 6, 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 Access 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 22-10-040 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)
2. Approve Minutes from September 1, 2022, Board of Directors Meeting
3. Approve a Purchase of Long-Term Resource Adequacy (RA) from SCE and Authorize the Chief Executive Officer to Execute a Purchase Agreement with Southern California Edison (SCE)
4. 30-Day Notice of Intent to Amend CPA's Joint Powers Agreement
5. Receive and File Community Advisory Committee Monthly Report

## **REGULAR AGENDA**

### **Action Items**

6. Approve Five (5) Renewable Power Purchase Agreements (PPAs) with Prologis for Local Resources to Serve the Power Share Program and Authorize the Chief Executive Officer to Execute the Agreements
7. Approve Six (6) Amendments to Renewable Power Purchase Agreements with Various Counterparties and Authorize the Chief Executive Officer to Execute the Amendments:
  - a. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Daggett Solar Power 3 LLC (Daggett 3)
  - b. Amended and Restated Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and 20SD 8me LLC (Rexford) **REVISED**
  - c. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Daggett Solar Power 2 LLC (Daggett 2)
  - d. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Arica Solar LLC (Arica)
  - e. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Chalan CA Solar Storage, LLC (Chalan)
  - f. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Desert Quartzite, LLC (Desert Quartzite)
8. Adopt Resolution No. 22-10-041 Approving Parameters Under which an Energy Prepayment Transaction can be Completed; Authorizing and/or Approving Documents or “Form of” Documents Supporting the Prepay Transaction; and Directing California Community Choice Financing Authority (CCCFA) to Make Payments to Service Providers for Issuance Costs from Prepay Bond Proceeds

## **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 NOVEMBER 3, 2022**

**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 22-10-040 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)

**Date:** October 6, 2022

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### **RECOMMENDATION**

Adopt Resolution No. 22-10-040 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 subvariants continue to pose a threat to the health and lives of the public as discussed more fully in Resolution No. 22-10-040. For these reasons, the recommended action is for the Board to adopt Resolution 22-10-040 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. 22-10-040 finding the continuing need to meet by teleconference

**RESOLUTION NO. 22-10-040****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 subvariants 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, September 1, 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, enacting CPA Resolutions, and as a response to mitigating the spread of COVID-19*

**CALL TO ORDER & ROLL CALL**

Chair Julian Gold 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	Director	Remote
2	<b>Alhambra</b>	Jeff Maloney	Director	Remote
3	<b>Arcadia</b>	Sho Tay	Director	Remote
4	<b>Beverly Hills</b>	Julian Gold	<b>Chair</b>	Remote
5	<b>Calabasas</b>	Mary Sue Maurer	Director	Remote
6	<b>Camarillo</b>	Susan Santangelo	Director	Remote
7	<b>Carson</b>	Cedric Hicks Reata Kulcsar	Alternate Alternate	Remote
8	<b>Claremont</b>	Jennifer Stark	Alternate	Remote
9	<b>Culver City</b>	Yasmine-Imani McMorrin Joe Susca	Alternate Alternate	Remote
10	<b>Downey</b>	Donald LaPlante	Alternate	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>			Absent
14	<b>Malibu</b>	Mikke Pierson	Director	Remote
15	<b>Manhattan Beach</b>	Joe Franklin	Alternate	Remote
16	<b>Moorpark</b>	Jessica Sandifer	Alternate	Remote
17	<b>Ojai</b>	Michelle Ellison	Alternate	Remote
18	<b>Oxnard</b>	Bert Perello	Director	Remote
19	<b>Paramount</b>	Vilma Cuellar Stallings	Director	Remote

20	<b>Redondo Beach</b>	Christian Horvath	Director	Remote
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	Director	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>	Linda Parks	<b>Vice Chair</b>	Remote
30	<b>West Hollywood</b>	Lindsey Horvath	Director	Remote
31	<b>Westlake Village</b>	Ned Davis	Director	Remote
32	<b>Whittier</b>	Vicki Smith	Alternate	Remote

All votes are unanimous unless otherwise stated.

**GENERAL PUBLIC COMMENT**

A written public comment was received.

**PLEDGE OF ALLEGIANCE**

Director Mahmud led the pledge of allegiance.

The Board of Directors dedicated a moment of silence in honor of Ventura County Supervisor Carmen Ramirez.

**CONSENT AGENDA**

1. Adopt Resolution 22-09-038 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953 (e)
2. Approve Minutes from July 7, 2022, Board of Directors Meeting
3. Receive and File Q2 2022 Risk Management Report
4. Receive and File Annual Electricity Usage by Jurisdiction
5. Receive and File Quarterly Communications Report (June - July 2022)
6. Receive and File Community Advisory Committee Monthly Report

**Motion:** Director Horvath, West Hollywood  
**Second:** Director Vizcarra, Temple City  
**Vote:** The consent agenda was approved by a roll call vote.

**REGULAR AGENDA**  
**Action Items**

7. (a) Adopt Resolution 22-09-039 Authorizing the Offer of Membership to the Cities of Hermosa Beach, Monrovia, and Santa Paula to Join CPA with Service to Customers in those Communities to Begin in 2024; and (b) Direct Staff to Prepare an Implementation Plan Addendum and any related Documents as Required by the California Public Utilities Commission (CPUC) and for Consideration by the Board at a Public Hearing on December 1, 2022

Karen Schmidt, Director of Strategic Initiatives, provided a presentation on the proposed expansion of CPA's service territory. Staff recommends extending an invitation to the three new cities of Hermosa Beach, Monrovia, and Santa Paula to join CPA for service to begin in 2024, all three of which are well-aligned with CPA Board priorities for expansion. Ms. Schmidt explained that a feasibility study was completed for each candidate with a \$10,000 cost contribution by each city; specified the benefits and impacts of the proposed 2022 candidates to CPA; and reviewed the process and timeline.

Vice Chair Parks suggested that CPA's invitation letter include the benefits of defaulting to the 100% Green rate upon joining CPA and enrolling customers. Director Parkhurst thanked staff for their outreach efforts; expressed that cities should join at the default rate that best suits their community; and pointed out that several cities have successfully transitioned from a lower tier to 100% Green. Ted Bardacke, CEO, clarified that as the cities move through the process of joining and the default rate discussion, CPA staff could share past city experiences to assist them with deciding what is best for their communities. Director McNamee expressed that cities should decide their default rate without any recommendation from the Board; noted that several Thousand Oaks customers have faced some challenges in opting down to a different rate. Director Perello opined that a suggestion steering the default rate one way or another may be perceived as a recommendation. Director Lopez expressed support for the expansion, emphasizing that CPA provides customer choice and has an excellent customer service center; although Agoura Hills went from the Lean to 100% Green rate, it was challenging, and it's best to reach 100% Clean as soon as possible. Director Mahmud expressed support for Vice Chair Parks' suggestion, adding that it would be helpful for impending cities to hear experiences of predecessors; encouraged fellow Board members to be advocates for and representatives of CPA to other cities. Director Luevanos expressed agreement with Vice Chair Parks, adding that giving low-income community residents the option of 100% clean renewable energy at a subsidized cost would be advantageous. Director Santangelo expressed support for Vice Chair Parks' suggestion, adding that sharing experiences adds value to the process for new customers and noted that the opt-down and opt-out options are easily accessible on the CPA website. Director Monteiro expressed a desire to see cities join CPA at a level they are comfortable with before moving to 100% Green, noting that CPA should not set a standard to join at 100% Clean. Director Franklin opined that in a market-driven economy, rate options are best left to the consumers. Director Maloney added that the challenges his city experienced going from Clean to 100% Green may illuminate the option of joining at 100% Green as the most effective way to reach climate change and carbon reduction goals; specified that while the Board must decide to invite the

cities to join CPA, it may also share other cities' previous experiences and benefits of starting at 100% Green, while offering the opportunity to join CPA. Director Lindsey Horvath opined that CPA empowers cities to achieve their goals on their own terms and that all Board members will serve as resources for new cities. Director Torres asked about preliminary data on CPA's energy capacity with the additional three cities. Mr. Bardacke specified that the three cities would add about 3.7% to CPA's load, and CPA would begin to procure additional resources as soon as the cities vote to join.

**Motion:** Director Horvath, Redondo Beach  
**Second:** Director Mahmud, South Pasadena  
**Vote:** Item 7 was approved by a roll call vote.

8. (a) Review 2022 Integrated Resource Plan ("IRP"); and, (b) Delegate Approval Authority of CPA's 2022 IRP to the Energy Resources & Planning Committee

Natasha Keefer, Vice President, Power Supply, provided a presentation on the 2022 Integrated Resource Plan (IRP), a California Public Utilities Commission (CPUC) planning proceeding. Ms. Keefer reviewed the background, purpose, and importance of the IRP and provided information on the forecast model (PLEXOS) and its inputs and outputs. CPA's plans will be optimized to achieve the three goals of reliability, GHG reduction, and least-cost procurement. Ms. Keefer identified the issues the IRP is intended to address and identified three scenarios (base, low, and high) that CPA staff will be running prior to IRP submission. Ms. Keefer shared preliminary capacity buildout scenario results, adding that due to CPA's large number of 100% Green customers, the base case is anticipated to meet and exceed the 2035 30 MMT GHG case target; graphically compared the 2022 IRP results with those of 2020. Lastly, Ms. Keefer stated that staff seeks to delegate final IRP approval to the Energy Committee due to the compressed submission schedule.

Chair Gold commented that the IRP provides the framework and structure for future planning. Director Parkhurst asked about the impact, if any, of the recent five-year extension of Diablo Canyon on the IRP and its forecasts. Ms. Keefer indicated that to date, the CPUC has included the Diablo Canyon retirement in its assumptions and will continue to do so. Mr. Bardacke added that the legislation authorizing the extension of Diablo Canyon explicitly states that it cannot be used in long-term planning so that all official planning going forward will not include Diablo Canyon.

**Motion:** Director Mahmud, South Pasadena  
**Second:** Director Parkhurst, Sierra Madre  
**Vote:** Item 8 was approved by a roll call vote.

9. Approve a 15-year Renewable Power Purchase Agreement with Cape Generating Station 2 LLC (Cape Station Geothermal) and Authorize the Chief Executive Officer to Execute the Agreement

Ms. Keefer provided a presentation on the Cape Station power purchase agreement (PPA), an energy contract from CPA's 2021 MTR Request for Offers

(RFO). Ms. Keefer explained that this project is being procured to meet MTR compliance, which requires CPA to procure a total of 678 megawatts (MW) of new reliable capacity between 2023-2026. Ms. Keefer provided an overview of the 2021 RFO valuation; identified various factors impacting the availability of incremental baseload renewables. Ms. Keefer provided an overview of the Cape Station project, noting that the project was the best-priced geothermal offer submitted into the solicitation. Ms. Keefer discussed the project rationale and evaluation summary, adding that CPA maintains a termination right if the CPUC does not grant a compliance extension, minimizing compliance risk. The project will allow CPA to make progress towards meeting its 59 MW baseload renewable procurement requirement and staff is seeking Board approval for the 33 megawatts Cape Station long-term renewable energy contract.

Director Mahmud inquired whether the fourth quartile ranking reflects the fact that the project is baseload and has 24/7 operating capabilities. Ms. Keefer confirmed it does, adding that staff evaluates a project according to the value of the energy; this project will provide high-value energy at a cost similar to other geothermal resources. In response to Director Mahmud's additional questions, Ms. Keefer clarified that the area surrounding Cape Station is a known geothermal area with existing operating geothermal plants. Ms. Keefer noted that this project will be interconnecting to the Milford wind line which connects to the Intermountain Switcher. Director Parkhurst expressed strong support for this contract, adding that the project will be critically important to meet compliance requirements, as baseload renewables are scarce. Responding to Director Zuckerman's question, Ms. Keefer clarified that a bilateral offer is one that comes to CPA outside of the RFO process and that Cape Station did not come through a bilateral offer. Mr. Bardacke added that CPA usually only considers resource-specific bilateral offers. Director Perello inquired whether the changing nature or federal land designation in Utah will affect this project and staff indicated that the Cape Station project will be on Bureau of Land Management land that is not in the area where there have been shifting boundaries.

**Motion:** Director Mahmud, South Pasadena  
**Second:** Director Hicks, Carson  
**Vote:** Item 9 was approved by a roll call vote.

#### **MANAGEMENT REPORT**

Mr. Bardacke enumerated significant impacts of the Federal Climate Bill and Inflation Reduction Act on CPA, including the addition and extension of the Renewable Energy Investment Tax Credits and Production Tax Credits for standalone storage. CPA may now work with developers who can access tax credits for standalone storage which can help keep procurement costs and rates down. Staff is working with developers who have pledged to start supplying their solar and battery storage projects with domestically produced panels; bonus tax credits are available for projects including domestic content. The bill also includes provisions that allow public power agencies to consider new ownership models through direct pay that may significantly reduce the cost of new projects. Mr. Bardacke indicated that two large battery storage projects came online in the past several weeks; when the two batteries are fully discharged, they can power over 150,000 homes in Southern California for four hours. Mr. Bardacke stated that the Power Share Program, which provides 100% renewable energy and 20% discounts to low-income customers in disadvantaged communities, is nearing its enrollment cap of about

6,200 customers. Mr. Bardacke recognized the City of Carson's dedicated marketing efforts where almost 10% of eligible customers have signed up.

**COMMITTEE CHAIR UPDATES**

Director Parkhurst, Energy Committee Chair, advised the Board that the Committee is moving forward with the IRP and will continue to review shortlists that may move contracts forward to the Board.

**BOARD MEMBER COMMENTS**

None.

**REPORT FROM THE CHAIR**

Chair Gold announced that the Board of Directors retreat will be postponed until the early spring. Chair Gold opined that the later date would allow new Board members to become better acquainted with CPA discussions and Board meetings.

**ADJOURN**

Chair Gold 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:** Natasha Keefer, Vice President of Power Supply

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

**Subject:** Approval of Long-Term Resource Adequacy Purchase for Westlake Village Load Migration from SCE and CEO Authorization

**Date:** October 6, 2022

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### **RECOMMENDATION**

Approve a purchase of long-term Resource Adequacy (RA) from SCE and authorize the Chief Executive Officer to execute a purchase agreement with Southern California Edison (SCE) consistent with the key contract terms described on page 2 of this staff report.

### **BACKGROUND/DISCUSSION**

CPA customers reimburse SCE for above-market costs of the energy resources procured on behalf of those customers through the PCIA or “exit fee”, including Resource Adequacy. In the past, CPA customers paid for Resource Adequacy costs that were procured for customer load that subsequently migrated from IOU service to CCA service with CPA, but CPA was not able to receive the benefit of the Resource Adequacy. That condition largely remains the same today.

However, in May 2022, the California Public Utilities Commission (CPUC) ordered the Investor-Owned Utilities (IOUs) to give load-serving entities like CPA who had load migrate from SCE the option to enter into an agreement to purchase the Resource Adequacy that SCE procured to comply with the IRP Procurement Track, which the CPUC ordered in 2020. The CPUC order indicated that the Resource Adequacy must be offered at the annual Resource Adequacy Market Price Benchmark, which is set annually and used for a number of purposes, including determining a portion of the PCIA.

This is a one-time provision and for CPA the offer is limited to the load migration associated with Westlake Village beginning CPA service in 2020. To procure the Resource Adequacy that was originally procured by SCE for Westlake Village, CPA has the option to enter into a contract with SCE to purchase CPA's share of the Resource Adequacy at the Market Price Benchmark. The amount of Resource Adequacy will be based on the amount of SCE's IRP Procurement Track purchases for Westlake Village and will vary over time.

### **Key Contract Terms**

- **Term:** The term of the agreement runs from January 1, 2023 through September 30, 2041.
- **Volume:** The volume of Resource Adequacy will range from 0.38 to 7.24 megawatts per month, which at its peak represents less than 0.5% of CPA's total annual Resource Adequacy obligations.
- **Price:** CPA would pay for the Resource Adequacy at the Market Price Benchmark, which fluctuates in any given year based on current market pricing and is the benchmark used to set the Resource Adequacy portion of the PCIA.

The agreement that SCE and CPA intend to use for this proposed transaction is similar to the confirmations already used by CPA to procure Resource Adequacy on a short-term basis with SCE. Subsequent to CPA Board approval, if conferred, SCE must submit the confirmation to the CPUC for approval; prior to such approval, SCE considers the confirmation confidential.

### **Rationale**

To ensure the reliable operation of the California grid, load-serving entities like CPA are required to procure Resource Adequacy, which can be called upon when the system needs it. CPA's Resource Adequacy obligations are based on its customers' peak usage. As one of the largest load-serving entities in California, CPA's Resource Adequacy obligation is considerable.

The supply of Resource Adequacy has been limited in recent years and while CPA has consistently met its Resource Adequacy obligations, it is increasingly difficult to find the necessary volumes, particularly at competitive prices. This contract with SCE will give CPA an additional amount of Resource Adequacy it can count on for the long-term at the Market Price Benchmark, which is an average of recent Resource Adequacy transactions. Thus the price CPA pays will be competitive with what it could source elsewhere in the market.

**ATTACHMENT**

None.



## Staff Report – Agenda Item 4

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

**From:** Ted Bardacke, Chief Executive Officer  
Nancy Whang, General Counsel

**Subject:** 30-Day Notice of Proposed Amendments to CPA’s Joint Powers Agreement

**Date:** October 6, 2022

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### **BACKGROUND**

#### **JPA Clean Up**

CPA’s current JPA consists of the original June 27, 2017 agreement and three subsequent amendments made over a 13-month period in 2018 and 2019.<sup>1</sup> As CPA works with new cities to join the JPA, staff would like a single clean copy to work with and to take the opportunity to make minor clean-up edits that reflect prior Board action.

In addition to incorporating the three amendments into a single copy of the JPA, the clean-up edits would include:

- Changing references of “Executive Director” to “Chief Executive Officer”.
- Reflect the Board’s delegation of signing authority to the CEO<sup>2</sup> so that the Chair or Vice Chair are not required to sign all contracts.
- Clean up reflecting Bylaws that Chair and Vice Chairs hold two-year terms.
- Clean up reflecting the last revision of the Bylaws related to the designation of the Vice Chairs.

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<sup>1</sup> The February 2018 Amendment clarifies the cost apportionment methodology in the event that a member withdraws from the JPA, including reimbursement by the Withdrawing Party to CPA for energy acquired for customers in the Withdrawing Party’s jurisdiction. The April 2018 Amendment changes the name of the organization from Los Angeles Community Choice Energy to Clean Power Alliance. The March 2019 Amendment clarifies procedures for the election of, and term limits for, Board Chair and Vice-Chair.

<sup>2</sup> The delegation of authority specified in the Energy Risk Management Policy, the Non-energy Contracting Policy, and the adoption of Resolution 19-05-009.

### **Streamlining of Staff Alternate Director Designation**

The Executive Committee is also considering proposing amendments to better track the designation of new staff Alternate directors and to streamline that process.

In the last year, turnover, internal reassignment, and retirements among county/city staff<sup>3</sup> have resulted in new staff Alternates where (i) a new staff Alternate attends a CPA Board meeting and CPA staff has not received written notice of action taken by the governing body; or (ii) the governing body has delegated its authority to one or more city staff and a staff member designates one or more other alternates depending on resource constraints. This requires CPA staff to verify Alternate delegations and designations after the fact.

It is possible that no changes to the JPA will be proposed in this area. No changes to the roles and responsibilities of Alternate Directors, including staff alternates, are being considered.

### **PROCESS**

- These proposed JPA amendments were discussed at the Executive Committee meeting on September 21, 2022. Revisions will incorporate Executive Committee feedback. Staff intends to bring the proposed amendments to the Board at the November Board meeting.
- The JPA requires that 30-day advance notice be given if the JPA is proposed to be amended. This notice in the Board Agenda satisfies this requirement.

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<sup>3</sup> For example, LA County, Arcadia, Calabasas, Hawthorne, Malibu, Manhattan Beach, and West Hollywood.



## Staff Report – Agenda Item 5

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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:** October 6, 2022

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### **RECOMMENDATION**

Receive and file.

### **DISCUSSION**

#### **CAC Officer Elections**

In June, staff opened a call for CAC officer nominations. Nominees were submitted via email, and an election for CAC Chair and Vice-Chairs was conducted during the July 21 and September 22, 2022, CAC meetings.

At the July CAC meeting, the CAC appointed committee member Neil Fromer (LA Unincorporated) as Chair and committee member Jennifer Burke (East Ventura/West LA Region) as Ventura County Vice-Chair. Due to absences among nominees, the election for Los Angeles County Vice-Chair was deferred to the September CAC meeting. At the September 22, 2022 meeting, the CAC appointed committee member Genaro Bugarin as Los Angeles County Vice-Chair. Each officer will serve a two-year term, which ends on June 30, 2024.

#### **CPA Member Expansion**

The CAC received an informational presentation on CPA's member agency expansion. Staff reviewed Board priorities for expansion, including filling geographic gaps, seeking load synergies, and diversifying CPA membership. Staff also highlighted the results of the feasibility studies conducted on three candidate member agencies (Hermosa Beach,

Monrovia, and Santa Paula) to evaluate the load, revenue, and emissions impacts of these communities joining CPA in 2024.

It is anticipated that in December 2022, the CPA Board will hold a public hearing and consider a resolution to admit these three candidate cities into CPA and to approve an Implementation Plan Addendum for submission to the California Public Utilities Commission (CPUC) by December 31, 2022.

### **Integrated Resource Plan Update**

The CAC received an informational presentation on CPA's 2022 Integrated Resource Plan (IRP). Under SB 350, the CPUC conducts a two-year planning cycle to consider IRP filings from all Load Serving Entities (LSEs), including CPA. The 2022 IRP submission is due on November 1, 2022. Staff previewed preliminary modeling study results and key findings during the CAC meeting. The CAC was also notified that on October 26th, staff will be seeking approval from the Energy Committee to submit the 2022 IRP to the CPUC by the deadline.

### **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	✓	✓	✓	✓	✓	✓	✓		✓		
Jennifer Burke	✓	✓	✓	✓	✓	✓	✓		✓		
Debbie West	A	✓	✓	✓	✓	✓	✓		A		
<b>San Gabriel Valley</b>											
Richard Tom	✓	✓	✓	✓	✓	✓	A		✓		
Kim Luu	✓	A	A	✓	A	✓	A		A		
<b>West/Unincorporated Ventura County</b>											
Lucas Zucker	A	A	A	A	✓	✓	✓		✓		
Vern Novstrup	A	✓	✓	✓	✓	✓	A		✓		
<b>South Bay</b>											
David Lesser	✓	✓	✓	✓	✓	A	✓		✓		
Emmitt Hayes	A	✓	✓	A			A				
<b>Gateway Cities</b>											
Irella Perez						✓	✓		✓		
Genaro Bugarin	✓	✓	✓	A	✓	✓	✓		✓		
<b>Westside</b>											
Cris Gutierrez	✓	✓	✓	✓	✓	✓	✓		✓		
David Haake	✓	✓	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

**July**

CEO Update  
Chair/Vice Chair Elections  
AB 205 Impacts

**August – Dark**

**September**

CEO Update  
Vice Chair Election  
Member Expansion  
IRP Presentation



## 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:** Renewable Power Purchase Agreements with Prologis  
**Date:** October 6, 2022

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### **RECOMMENDATION**

Approve five (5) Renewable Power Purchase Agreements (PPAs) with Prologis for local resources to serve the Power Share program and authorize the Chief Executive Officer to execute the agreements.

### **BACKGROUND**

#### **2021 Power Share RFO (DAC-GT and CS-GT)**

CPA launched the 2021 Power Share RFO targeting procurement of 9.19 MW of RPS-eligible generation and 3.13 MW of RPS-eligible solar generation to fill its program allocation under the CPUC-approved DAC-GT and CS-GT program respectively. The DAC-GT and CS-GT programs promote renewable energy development in underserved communities and provide enrolled customers with 100% renewable energy and a 20% bill discount. CPA previously procured 3.00 MW of RPS-eligible generation in a similar 2020 RFO for the DAC-GT program.

CPA received eight responses to the 2021 RFO from three unique developers, comprised of six DAC-GT offer and two CS-GT offers. All offers were for RPS-eligible solar generation. On July 19, 2022, a review team consisting of three Board members from the Energy Committee as well as senior staff consisting of the Chief Executive Officer, the Chief Operating Officer, the Vice President of Power Supply, and the Director of

Structured Contracts met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Committee. On July 27, 2022, the Energy Committee reviewed and approved the recommended shortlist, authorizing staff to proceed with renewable PPA negotiations. From the Energy Committee approved shortlist, CPA entered into exclusive negotiations for 7 renewable projects for contracts 15 years in length. The five Prologis projects were among the shortlisted projects from the 2021 Power Share solicitation.

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

### **Projects Overview**

The Wilmington 1, Dominguez, El Segundo, Workman, and Wilmington 2 projects are rooftop solar projects located in Disadvantaged Communities (DACs) with commercial operation dates of 12/23/2023.

<b>Project</b>	<b>Technology</b>	<b>Location</b>	<b>Capacity (MW)</b>	<b>Online Date</b>	<b>Term (years)</b>
Wilmington 1	Rooftop Solar	Carson	1.8	12/23/2023	15
Workman	Rooftop Solar	Whittier	1.92	12/23/2023	15
El Segundo	Rooftop Solar	Hawthorne	0.64	12/23/2023	15
Wilmington 2	Rooftop Solar	Carson	0.6	12/23/2023	15
Dominguez	Rooftop Solar	Carson	0.96	12/23/2023	15

All five projects have passed Fast Track Interconnection screens. Site control has been secured for all projects, which are located on the rooftops of Prologis properties.

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

**Developer**

Prologis is a global leader in logistics real estate with a 948 million square foot worldwide portfolio. Prologis' Global Energy team utilizes the scale of Prologis to deploy energy projects across its properties. To date, Prologis has permitted and built 54 solar rooftop projects within Los Angeles, Riverside, and San Bernardino counties.

PowerFlex System, Inc, a subsidiary of EDF Renewables North America, is the engineering, procurement, and construction (EPC) contractor for the projects. PowerFlex has installed over 420 MW of solar at over 200 facilities in 30 utility territories.

**Evaluation Criteria**

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

**Value**

Prices for rooftop solar projects are significantly higher than prices for ground-mounted utility-scale projects. However, the Prologis project prices were evaluated against historical offer prices for rooftop and small-scale ground-mounted solar from CPA's 2020 Power Share RFO and 2019 Distributed Track RFO and were competitive for this type of project. The proposed prices are also under the price cap set by the CPUC for eligible projects in the DAC-GT and CS-GT program. The CPUC will reimburse CPA for the above market costs of the program if they are incurred.

**Development Score**

The projects rank High. Site control of the rooftop space for the projects is secured. The projects do not require environmental permitting. Prologis has completed 213 similar size projects prior to their RFO submission.

**Workforce Development**

The projects rank High as construction for the project will be conducted using union labor via a Project Labor Agreement. The developer estimates that the five projects will create 98 new direct construction jobs and 10 permanent jobs.

**Environmental Stewardship**

The projects rank High as they will be constructed in the built environment on industrial properties and is therefore considered multi-benefit renewable energy that provides additional societal, health, economic, or water saving benefits beyond the climate and GHG reduction benefits of renewable energy.

**Benefits to Disadvantaged Communities**

The projects rank High as they are each located in a Disadvantaged Community and will provide bill savings to low income customers.

**Project Location**

The projects rank High as they are located within Los Angeles County in CPA's service territory.

**Rationale**

The Prologis projects are being procured under the CPUC Disadvantaged Communities Green Tariff (DAC-GT) program, which is a program designed to encourage the development of clean energy resources located in disadvantaged communities within the state of California. This program allows CPA to offer eligible customers who enroll with 100% renewable energy and a 20% bill discount.

The CPUC reimburses CPA on program costs, including above-market procurement costs, the 20% customer bill discount, and CPA's program implementation costs. The Prologis projects comply with project eligibility requirements of the DAC-GT program and would serve about 3,000 Power Share customers. CPA currently has approximately 6,200 customers enrolled in the Power Share program.

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

### **ENVIRONMENTAL REVIEW**

The Prologis projects do not require Conditional Use Permits and are exempt from CEQA review. City building and electrical permits will be required. CPA has no role, jurisdiction, or authority whatsoever with respect to permit review or project approval.

### **ATTACHMENTS**<sup>1</sup>

1. Prologis PPA Presentation
2. Renewable Power Purchase Agreement with Prologis - Wilmington
3. Renewable Power Purchase Agreement with Prologis – Workman
4. Renewable Power Purchase Agreement with Prologis – El Segundo
5. Renewable Power Purchase Agreement with Prologis – Wilmington 2
6. Renewable Power Purchase Agreement with Prologis - Dominguez

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<sup>1</sup> Consistent with industry practice, portions of the agreements have been redacted to protect market sensitive information.

# Power Share PPAs

## Item 6

October 6, 2022



# Action Requested

- ⚡ Board approval is requested for five long-term renewable energy contracts from CPA's 2021 Power Share RFO:

Developer	Project Name	Capacity (MW)	Technology	Online Date	Term (years)	Location
Prologis	Wilmington 1	1.80	Solar PV - Rooftop	12/30/2023	15	Carson
Prologis	Workman	1.92	Solar PV - Rooftop	12/30/2023	15	Whittier
Prologis	El Segundo	0.64	Solar PV - Rooftop	12/30/2023	15	Hawthorne
Prologis	Wilmington 2	0.60	Solar PV - Rooftop	12/30/2023	15	Carson
Prologis	Dominguez	0.96	Solar PV - Rooftop	12/30/2023	15	Carson

# Disadvantaged Communities (DAC) Programs

## Power Share – CPA Branded – Customer Facing

Promotes the development of renewable generation in and for underserved communities

Disadvantaged Community  
Green Tariff

(DAC-GT)

Community Solar  
Green Tariff

(CS-GT)

*Enrolled customers receive 100% renewable energy and a 20% bill discount*



# Regulatory Background

- ⚡ In June 2018, the CPUC approved D. 18-06-027 which created the DAC-GT and CS-GT programs
- ⚡ CPA was allocated a total of 12.19 MW for its DAC-GT program and 3.37 MW for its CS-GT program
  - This will provide ~8,600 income-qualified customers in disadvantaged communities with 100% renewable energy from new, DAC-located renewable energy resources
  - Current Power Share customers are served by interim resources procured from SCE
- ⚡ The CPUC makes CPA whole on program costs
  - CPUC funds the above-market procurement cost for these resources, the 20% discount on customers' total electric bill, and CPA's program implementation costs (administration, marketing, education and outreach)
- ⚡ CPA must implement the programs consistent with CPUC guidelines
  - Customer and project eligibility
  - CPUC-approved program design and RFO solicitations, including PPA approval
  - Project pricing is subject to a confidential price cap set by the CPUC

# RFO Overview

- ⚡ The 2021 DAC RFO for DAC-GT and CS-GT resources was released in December 2021, with offers due on June 1, 2022
- ⚡ On July 27, 2022, the Energy Committee shortlisted seven projects from this RFO, including five DAC-GT and two CS-GT projects
  - Staff is expecting to bring the two Community Solar project PPAs to the Board for approval in December
- ⚡ If approved today, the PPAs will be submitted to the CPUC for approval and be eligible for above-market cost reimbursement
- ⚡ CPA is planning to launch a third RFO to secure additional supply in late 2022/early 2023

# Prologis Projects

⚡ These projects will make significant progress towards filling CPA's DAC-GT program allocation

Project Name	Capacity (MW)	Online Date	Location	Environmental Stewardship	Benefits to DACs	Workforce Development	Project Location	Development Score
Wilmington 1	1.8	12/30/2023	Carson	High	High	High	High	High
Workman	1.92	12/30/2023	Whittier	High	High	High	High	High
El Segundo	0.64	12/30/2023	Hawthorne	High	High	High	High	High
Wilmington 2	0.6	12/30/2023	Carson	High	High	High	High	High
Dominguez	0.96	12/30/2023	Carson	High	High	High	High	High

CPA's DAC-GT Allocation (MW)	2020 DAC RFO Procurement (MW)	CPA's Remaining Allocation (MW)	CPA's Remaining Allocation after Recommendation (MW)	CPA's Remaining Allocation after Recommendation (%)
12.19	3.00	9.19	3.27	27%

# Action Requested

Approve the five Prologis long-term renewable PPAs and authorize the CEO to execute the agreements

## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** ESCA-PLD-CPA-Wilmington1 LLC, a Delaware limited liability company

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

**Description of Facility:** A 1.8 MW photovoltaic generating facility located on the rooftop of a commercial industrial warehousing and logistics building at 22351 South Wilmington Avenue

**Milestones:**

Milestone	Expected Date for Completion
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Not Applicable
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase 1: Complete Phase 2: 10/25/22
<b>Executed Interconnection Agreement</b>	11/1/2022
<b>Financial Close</b>	██████████
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	7/17/2023
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</b>	10/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	12/23/2023
<b>Expected Commercial Operation Date</b>	12/30/2023

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

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	4,048
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 1.8 MW of total Facility capacity

**Guaranteed Construction Start Date:** 4/24/2023

**Guaranteed Commercial Operation Date:** 12/30/2023

**Contract Price:** The Contract Price shall be:

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

**Seller's Assumed Tax Credit Rate:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%) and/or the PTC at \$0.027/kWh.

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Development Security:** \$60/kW of Guaranteed Capacity

**Performance Security:** \$60/kW of Guaranteed Capacity

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Exhibit S	Supply Chain Code of Conduct

## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (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 3.14(c).

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

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

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

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

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

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

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

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

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

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

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Party to deliver less Facility Energy than the full amount forecasted in accordance with Section 4.4 for a period of time; and

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

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

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

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

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

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

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

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Compliance Actions**” has the meaning set forth in Section 3.14(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

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

“**Consent to Collateral Assignment**” has the meaning set forth in Exhibit O.

“**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; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that Seller will claim a Tax Credit rate for the Generating Facility that is higher than Seller’s Assumed Tax Credit Rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by (a) \$ [REDACTED] /MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%) or (b) \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above \$0.027/kWh.

“**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.

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

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

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

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

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

Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

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

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

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

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

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

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

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

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

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

**“Deemed Delivered Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time

Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

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

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

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

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

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

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

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

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

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

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

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

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

“**Energy**” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.6.

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

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

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

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

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

“**Facility**” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

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

“**Facility Meter**” means the CAISO approved 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 Facility Energy delivered to the Facility Metering 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 Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

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

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

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

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

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

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

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.7(a).

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

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

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

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

**“Green-e Energy National Standard”** means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated November 12, 2019, as may be further amended from time to time.

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

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

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

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.6.

**“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(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection 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 1.8 MW AC.

**“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- with an outlook designation of “stable” from S&P or A3 with an outlook designation

of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

“**Lost Output**” has the meaning set forth in Section 4.6.

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

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

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

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than zero dollars (\$0).

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

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

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

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

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

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

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

(a) A tangible net worth of not less than 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 facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

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

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

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

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

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

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

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

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

**“Product”** has the meaning on the Cover Sheet.

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

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

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

**“Real-Time Forecast”** has the meaning set forth in Section 4.3(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 Future Environmental Attribute.

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

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

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

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

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

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

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, 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’s WREGIS Account**” has the meaning set forth in Section 4.7(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.

“**Site**” means the rooftop on 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.

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

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

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

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

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

“**Test Energy Rate**” has the meaning set forth in Section 3.7.

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

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

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

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

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

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

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(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;

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;

(h) 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;

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

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

(k) 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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1. **Contract Term.**

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

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

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“**Approval Application**”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits 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 received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

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

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

(h) 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;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or the Facility Energy; and

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

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

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

2.4. **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), 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 in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. 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 Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3. **Compensation.**

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

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

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

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

3.4. **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered from the Facility may deviate from the amount of Scheduled Energy, and that 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.

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

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Section 3.6(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 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7. **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 from the 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 for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price, and, after ninety (90) days, zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8. **[Reserved]**.

3.9. **[Reserved]**.

3.10. **[Reserved]**.

3.11. **CEC Certification and Verification**. Subject to Section 3.14, Seller shall take all necessary steps including 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.

3.12. **Eligibility**. Subject to Section 3.14, 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 3.12 means efforts consistent with and subject to Section 3.14.

3.13. **California Renewables Portfolio Standard**. Subject to Section 3.14, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.14. **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 3.14, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.14 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.

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

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1. **Delivery**.

(a) **Energy**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

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

#### 4.2. **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer shall be 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 Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Facility 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. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of (i) the available capacity of the Facility, and (ii) the hourly Facility Energy for each day of the following month (items (i)-(ii) collectively referred to as the "**Forecasted Product**") in a form substantially similar to Exhibit F-2 (the "**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 and Buyer's SC (if applicable) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (the "**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. 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 Forecast. 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 (the "**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 / one (1) MWh 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 Facility 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 4.4(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 SC 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 Forced Facility Outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the Real-Time forecast required in Section 4.3(d), and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Facility Energy for such hour set forth in the Monthly Forecast, and (ii) the actual Facility 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of Seller being aware of the occurrence of such Forced Facility Outage.

#### 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 or Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

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

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

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonable 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. **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 4.5(a)(i). Seller shall limit maintenance repairs performed pursuant to this Section 4.5(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.

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

4.6. **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has

achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of: (a) any Deemed Delivered Energy plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub 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 Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.7. **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.14, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. 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 posted by WREGIS and delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.7, 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 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

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

## ARTICLE 5 TAXES

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

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

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3. **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including by reserving interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for Buyer's sole use, (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 ID, 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. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

## **ARTICLE 7 METERING**

7.1. **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or the Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2. **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of the subsequent month for Product delivered during the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, Adjusted Energy Production, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall provide Seller with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2. **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7. **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8. **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a)

the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## **ARTICLE 9 NOTICES**

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

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

## **ARTICLE 10 FORCE MAJEURE**

### 10.1. **Definition.**

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

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

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); [(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event]; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

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

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance

of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (if such termination occurs prior to or as of the Commercial Operation Date), or (ii) the Termination Payment (if such termination occurs following the Commercial Operation Date), as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall 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 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 after subtracting for the estimated costs of decommissioning and sale of assets) of 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6. **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

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

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7. **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2. **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED

ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) is located within an eligible DAC.

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

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 14 ASSIGNMENT

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

14.2. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O (“**Consent to Collateral Assignment**”).

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

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and 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 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 (“**Buyer Assignment Agreement**”); *provided*, 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 Buyer 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.

14.6. **Sale or Transfer of Site**. Notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign or transfer this Agreement to any Person to whom the owner of the building on which the Facility is located has sold, conveyed, transferred, or assigned its interest in the building on which the Facility is located. In the event of an assignment of this Agreement in connection with the transfer or sale of the Facility, Seller shall provide Buyer Notice at least five (5) Business Days after the date of such transfer, which Notice shall include a written agreement signed by the Person to which Seller has sold or transferred its interests in the Facility following a sale or transfer of the building on which the Facility is located that provides that such Person has assumed all of Seller's obligations and liabilities under this Agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1. **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

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

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

## **ARTICLE 16 INDEMNIFICATION**

### 16.1. **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

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

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

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

## **ARTICLE 17 INSURANCE**

### 17.1. **Insurance**.

(a) **General Liability**. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount

of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

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

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

(f) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through 17.1(f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any

manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

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

18.2. Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party

unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or 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, directors, 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.

**ESCA-PLD-CPA-Wilmington1 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:** Wilmington 1

**Site includes all or some of the following APNs:** 7315031019

**City:** Carson

**County:** Los Angeles

**Zip Code:** 90745

**Latitude and Longitude:** Lat: 33.824150, Long: -118.244515

**Facility Description:** See Cover Sheet

**Delivery Point:** Existing 12kV Distribution Line (Coordinates: 33.824150, -118.244515)

**PNode:** ARCO1G\_7\_B1

**Transmission Provider:** Southern California Edison

**Additional Information:** See Site Diagram on following page

# Facility Description



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1.b. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

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

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve

Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.b.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
  4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
    - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - b. a Force Majeure Event occurs; or
    - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

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

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

**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

## 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, 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.

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

c. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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.

e. 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 (f) 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 from Buyer. 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.

f. 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.

g. 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.

h. 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.

i. 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:

Executive Summary.

Facility description.

- 1) Site plan of the Facility.
- 2) Description of any material planned changes to the Facility or the site.
- 3) Gantt chart schedule showing progress on achieving each of the Milestones.
- 4) Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 5) Forecast of activities scheduled for the current calendar quarter.
- 6) Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 7) List of issues that are reasonably likely to affect Seller's Milestones.
- 8) 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.
- 9) Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 10) 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.
- 11) Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 12) Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**ANNUAL EXPECTED AVAILABLE FACILITY ENERGY**

[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 FACILITY ENERGY**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6, 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; provided the market value of Replacement Green Attributes shall be equal to the average of price quotations from no less than three (3) reasonably selected brokers.

D = the Contract Price, in \$/MWh

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

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

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

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

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

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

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

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

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

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of the Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the "**Construction Start Date**");  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**



**The Bank of Nova Scotia, NY Agency**

Trade Service Center  
250 Vesey Street (24<sup>th</sup> Floor)  
New York, NY 10281  
Tel: 212 225 5000  
Fax: 212 225 6464  
SWIFT: NOSCUS33TPS

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
801 S Grand, Suite 400  
Los Angeles, CA 90017

Applicant:

[Name & Address]

Amount: US\$[XXXXXXXX]

By the order of \_\_\_\_\_ (“Applicant”), we, The Bank of Nova Scotia, New York Agency (“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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”). We have been informed by the applicant that this Letter of Credit is issued 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 compliant 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 officer, in the form attached hereto as Exhibit A "Drawing Certificate," 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 (212) 225-6464 or such other number as specified from time-to-time by the Issuer. The Beneficiary may contact us at (212) 225-5418 to confirm receipt of the facsimile transmission. Beneficiary's failure to seek such a telephone confirmation does not affect our obligation to honor such presentation.

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 original documents.

Issuer hereby agrees that all documents 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 250 Vesey Street, 24th Floor, New York, NY 10281, Attn: Trade Services Center. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a compliant presentation. 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 automatically 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 from the present Expiration Date hereof and upon each anniversary for such date, 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 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 Trade Services Center at 250 Vesey Street, 24th Floor, New York, NY 10281, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Trade Services Center at (212) 225-5418 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

The Bank of Nova Scotia, New York Agency  
250 Vesey Street, 24th Floor  
New York, NY 10281, Attn: Trade Services Center

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Clean Power Alliance of Southern California, a California joint powers authority, 801 S Grand, Suite 400, Los Angeles, CA 90017, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by The Bank of Nova Scotia, New York Agency (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 Officer

Date \_\_\_\_\_

*We have reviewed the language of the above standby letter of credit draft and hereby request The Bank of Nova Scotia, New York Agency to issue a standby letter of credit as drafted.*

*Approved*

*Prologis L.P.*

---

*Signature*

## EXHIBIT L

### FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; *provided*, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned

Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

## 2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
- (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
  - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; *provided*, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections  [Severability],  [Counterparts],  [Amendments] and  [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**5. Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By: .....

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....

Name:

Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“Assignment Period”** means the period beginning on [\_\_\_\_\_] and extending until [\_\_\_\_\_] *provided*, in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the 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**  
**RESERVED**

Exhibit M - 1

**EXHIBIT N**

**NOTICES**

<p><b>ESCA-PLD-CPA-Wilmington1 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>                  Street: 1800 Wazee St., Suite 500                  City: Denver, CO 80202                  Attn: Global Energy                  Phone: (800) 566-2706                  Email: globalenergyops@prologis.com</p>	<p><b>All Notices:</b>                  Street: 801 S Grand, Suite 400                  City: Los Angeles, CA 90017                  Attn: Executive Director                  Phone: (213) 269-5870                  E-mail: tbardacke@cleanpoweralliance.org</p>
<p><b>Reference Numbers:</b>                  Duns: TBD                  Federal Tax ID Number: TBD</p>	<p><b>Reference Numbers:</b>                  Duns:                  Federal Tax ID Number:</p>
<p><b>Invoices:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Invoices:</b>                  Attn: CPA Settlements                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Scheduling: TBD</b>                  Attn: Day Ahead Scheduling                  Phone: (817) 303-1104                  Email: TenaskaComm@tnsk.com</p>
<p><b>Confirmations: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Confirmations:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Payments:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>                  BNK: Bank of America                  ABA: 111000012                  ACCT: XXXXXX8368</p>	<p><b>Wire Transfer:</b>                  BNK: River City Bank                  ABA: 121133416                  ACCT: XXXXXX8042</p>

## EXHIBIT O

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent's instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced

foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CPA that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience necessary to satisfy the definition of Permitted Transferee in the PPA (a "Permitted Transferee"), *provided, further*, that it is acknowledged and agreed that [\_\_\_\_\_] [*Insert name of initial Collateral Agent*] is a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such

purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, for so long as it is or was entitled to under the PPA or Replacement PPA.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice given by Collateral Agent to Project Company pursuant to the Financing Documents relating to an event of default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions.

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. 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.

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

## **SCHEDULE A**

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

**EXHIBIT P**  
**MATERIAL PERMITS**

<i>No.</i>	<i>Permits</i>
1	City of Carson Plan Check
2	City of Carson Fire Plan Check
3	LA County Building Permit
4	LA County Electrical Permit

**EXHIBIT Q**  
**RESERVED**

Exhibit Q – 1

**EXHIBIT R**

**METERING DIAGRAM**

[To be inserted by Seller upon date of Financial Close reflected in the Cover Sheet]

## EXHIBIT S

### Supply Chain Code of Conduct

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

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

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

#### 1. **Freely Chosen Employment**

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

#### 2. **Young Workers**

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

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

**3. Working Hours**

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

**4. Wages and Benefits**

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

**5. Humane Treatment**

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

**6. Non-Discrimination/Non-Harassment**

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

**7. Freedom of Association**

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

**8. Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

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**RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET**

**Seller:** ESCA-PLD-CPA-Workman Mill LLC, a Delaware Limited Liability Company

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

**Description of Facility:** A 1.92 MW photovoltaic generating facility located on the rooftop of a commercial industrial warehousing and logistics building at 3777 Workman Mill Road

**Milestones:**

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Not Applicable
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase 1: Complete Phase 2: 10/25/22
<b>Executed Interconnection Agreement</b>	11/1/2022
<b>Financial Close</b>	██████████
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	6/16/2023
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</b>	10/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	12/23/2023
<b>Expected Commercial Operation Date</b>	12/30/2023

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

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	4,676
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 1.92 MW of total Facility capacity

**Guaranteed Construction Start Date:** 4/24/2023

**Guaranteed Commercial Operation Date:** 12/30/2023

**Contract Price:** The Contract Price shall be:

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

**Seller's Assumed Tax Credit Rate:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%) and/or the PTC at \$0.027/kWh.

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Development Security:** \$60/kW of Guaranteed Capacity

**Performance Security:** \$60/kW of Guaranteed Capacity

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (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 3.14(c).

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

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

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

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

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

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

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

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

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

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

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Party to deliver less Facility Energy than the full amount forecasted in accordance with Section 4.4 for a period of time; and

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

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

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

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

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

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

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

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Compliance Actions**” has the meaning set forth in Section 3.14(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

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

“**Consent to Collateral Assignment**” has the meaning set forth in Exhibit O.

“**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; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that Seller will claim a Tax Credit rate for the Generating Facility that is higher than Seller’s Assumed Tax Credit Rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by (a) \$ [REDACTED]/MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%) or (b) \$ [REDACTED]/MWh for each \$0.0005/kWh that the PTC rate is above \$0.027/kWh.

“**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.

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

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

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

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

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

Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

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

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

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

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

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

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

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

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

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

**“Deemed Delivered Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time

Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

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

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

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

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

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

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

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

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

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

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

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

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

“**Energy**” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.6.

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

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

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

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

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

**“Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

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

**“Facility Meter”** means the CAISO approved 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 Facility Energy delivered to the Facility Metering 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 Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

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

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

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

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

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

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

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.7(a).

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

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

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

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

**“Green-e Energy National Standard”** means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated November 12, 2019, as may be further amended from time to time.

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

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

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

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.6.

**“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(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection 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 1.92 MW AC.

**“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- with an outlook designation of “stable” from S&P or A3 with an outlook designation

of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

“**Lost Output**” has the meaning set forth in Section 4.6.

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

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

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

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than zero dollars (\$0).

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

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

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

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

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

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

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

(a) A tangible net worth of not less than 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 facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

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

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

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

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

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

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

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

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

**“Product”** has the meaning on the Cover Sheet.

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

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

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

**“Real-Time Forecast”** has the meaning set forth in Section 4.3(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 Future Environmental Attribute.

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

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

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

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

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

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

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, 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’s WREGIS Account**” has the meaning set forth in Section 4.7(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.

“**Site**” means the rooftop on 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.

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

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

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

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

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

“**Test Energy Rate**” has the meaning set forth in Section 3.7.

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

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

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

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

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

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

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(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;

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;

(h) 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;

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

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

(k) 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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1. **Contract Term.**

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

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

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“**Approval Application**”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits 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 received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

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

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

(h) 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;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or the Facility Energy; and

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

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

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

2.4. **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), 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 in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. 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 Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3. **Compensation.**

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

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

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

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

3.4. **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered from the Facility may deviate from the amount of Scheduled Energy, and that 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.

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

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Section 3.6(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 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7. **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 from the 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 for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price, and, after ninety (90) days, zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8. **[Reserved]**.

3.9. **[Reserved]**.

3.10. **[Reserved]**.

3.11. **CEC Certification and Verification**. Subject to Section 3.14, Seller shall take all necessary steps including 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.

3.12. **Eligibility**. Subject to Section 3.14, 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 3.12 means efforts consistent with and subject to Section 3.14.

3.13. **California Renewables Portfolio Standard**. Subject to Section 3.14, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.14. **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 3.14, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.14 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.

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

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1. **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

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

#### 4.2. Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer shall be 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 Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Facility 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. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of (i) the available capacity of the Facility, and (ii) the hourly Facility Energy for each day of the following month (items (i)-(ii) collectively referred to as the "Forecasted Product") in a form substantially similar to Exhibit F-2 (the "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 and Buyer's SC (if applicable) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (the "**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. 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 Forecast. 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 (the "**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 / one (1) MWh 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 Facility 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 4.4(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 SC 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 Forced Facility Outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the Real-Time forecast required in Section 4.3(d), and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Facility Energy for such hour set forth in the Monthly Forecast, and (ii) the actual Facility 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of Seller being aware of the occurrence of such Forced Facility Outage.

#### 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 or Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

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

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

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonable 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. **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 4.5(a)(i). Seller shall limit maintenance repairs performed pursuant to this Section 4.5(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.

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

4.6. **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has

achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of: (a) any Deemed Delivered Energy plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub 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 Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.7. **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.14, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. 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 posted by WREGIS and delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.7, 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 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

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

## ARTICLE 5 TAXES

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

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

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3. **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including by reserving interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for Buyer's sole use, (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 ID, 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. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

## **ARTICLE 7 METERING**

7.1. **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or the Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2. **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

**ARTICLE 8**  
**INVOICING AND PAYMENT; CREDIT**

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of the subsequent month for Product delivered during the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, Adjusted Energy Production, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall provide Seller with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2. **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7. **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8. **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a)

the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## **ARTICLE 9 NOTICES**

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

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

## **ARTICLE 10 FORCE MAJEURE**

### 10.1. **Definition.**

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

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

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); [(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event]; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

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

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance

of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (if such termination occurs prior to or as of the Commercial Operation Date), or (ii) the Termination Payment (if such termination occurs following the Commercial Operation Date), as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall 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 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 after subtracting for the estimated costs of decommissioning and sale of assets) of 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6. **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

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

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7. **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2. **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED

ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) is located within an eligible DAC.

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

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 14 ASSIGNMENT

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

14.2. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O (“**Consent to Collateral Assignment**”).

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

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and 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 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 (“**Buyer Assignment Agreement**”); *provided*, 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 Buyer 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.

14.6. **Sale or Transfer of Site**. Notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign or transfer this Agreement to any Person to whom the owner of the building on which the Facility is located has sold, conveyed, transferred, or assigned its interest in the building on which the Facility is located. In the event of an assignment of this Agreement in connection with the transfer or sale of the Facility, Seller shall provide Buyer Notice at least five (5) Business Days after the date of such transfer, which Notice shall include a written agreement signed by the Person to which Seller has sold or transferred its interests in the Facility following a sale or transfer of the building on which the Facility is located that provides that such Person has assumed all of Seller's obligations and liabilities under this Agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1. **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

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

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

## **ARTICLE 16 INDEMNIFICATION**

### 16.1. **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(a) 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**").

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

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

## **ARTICLE 17 INSURANCE**

### 17.1. **Insurance.**

(a) **General Liability.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount

of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

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

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

(f) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through 17.1(f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any

manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2. Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party

unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or 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, directors, 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.

**ESCA-PLD-CPA-Workman Mill 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:** Workman

**Site includes all or some of the following APNs:** 8125015014

**City:** Whittier

**County:** Los Angeles

**Street Address:** 90601

**Zip Code:** 90601

**Latitude and Longitude:** Lat: 34.0207029, Long: -118.0401986

**Facility Description:** See Cover Sheet

**Delivery Point:** Existing 12kV Campus Circuit (Coordinates: 34.022442, -118.037914)

**PNode:** MESACAL\_6\_N004

**Transmission Provider:** Southern California Edison

**Additional Information:** See Site diagram on following page

# Facility Description



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date.**” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1.b. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

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

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve

Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.b.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
  4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
    - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - b. a Force Majeure Event occurs; or
    - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

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

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

**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

## 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, 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.

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

c. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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.

e. 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 (f) 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 from Buyer. 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.

f. 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.

g. 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.

h. 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.

i. 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:

Executive Summary.

Facility description.

- 1) Site plan of the Facility.
- 2) Description of any material planned changes to the Facility or the site.
- 3) Gantt chart schedule showing progress on achieving each of the Milestones.
- 4) Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 5) Forecast of activities scheduled for the current calendar quarter.
- 6) Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 7) List of issues that are reasonably likely to affect Seller's Milestones.
- 8) 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.
- 9) Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 10) 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.
- 11) Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 12) Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**ANNUAL EXPECTED AVAILABLE FACILITY ENERGY**

[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 FACILITY ENERGY**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6, 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; provided the market value of Replacement Green Attributes shall be equal to the average of price quotations from no less than three (3) reasonably selected brokers.

D = the Contract Price, in \$/MWh

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

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

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

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

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

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with an Installed Capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_[DATE]\_\_\_\_.
4. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.
6. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of the Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**



**The Bank of Nova Scotia, NY Agency**

Trade Service Center  
250 Vesey Street (24<sup>th</sup> Floor)  
New York, NY 10281  
Tel: 212 225 5000  
Fax: 212 225 6464  
SWIFT: NOSCUS33TPS

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
801 S Grand, Suite 400  
Los Angeles, CA 90017

Applicant:

[Name & Address]

Amount: US\$[XXXXXXXX]

By the order of \_\_\_\_\_ (“Applicant”), we, The Bank of Nova Scotia, New York Agency (“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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”). We have been informed by the applicant that this Letter of Credit is issued 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 compliant 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 officer, in the form attached hereto as Exhibit A "Drawing Certificate," 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 (212) 225-6464 or such other number as specified from time-to-time by the Issuer. The Beneficiary may contact us at (212) 225-5418 to confirm receipt of the facsimile transmission. Beneficiary's failure to seek such a telephone confirmation does not affect our obligation to honor such presentation.

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 original documents.

Issuer hereby agrees that all documents 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 250 Vesey Street, 24th Floor, New York, NY 10281, Attn: Trade Services Center. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a compliant presentation. 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 automatically 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 from the present Expiration Date hereof and upon each anniversary for such date, 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 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 Trade Services Center at 250 Vesey Street, 24th Floor, New York, NY 10281, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Trade Services Center at (212) 225-5418 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

The Bank of Nova Scotia, New York Agency  
250 Vesey Street, 24th Floor  
New York, NY 10281, Attn: Trade Services Center

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Clean Power Alliance of Southern California, a California joint powers authority, 801 S Grand, Suite 400, Los Angeles, CA 90017, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by The Bank of Nova Scotia, New York Agency (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 Officer

Date \_\_\_\_\_

*We have reviewed the language of the above standby letter of credit draft and hereby request The Bank of Nova Scotia, New York Agency to issue a standby letter of credit as drafted.*

*Approved*

*Prologis L.P.*

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*Signature*

## EXHIBIT L

### FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; *provided*, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned

Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

## 2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
- (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
  - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; *provided*, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections  [Severability],  [Counterparts],  [Amendments] and  [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**5. Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By: .....

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....

Name:

Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“Assignment Period”** means the period beginning on [\_\_\_\_\_] and extending until [\_\_\_\_\_] *provided*, in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the 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**  
**RESERVED**

Exhibit M - 1

**EXHIBIT N**

**NOTICES**

<p><b>ESCA-PLD-CPA-Workman Mill 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>                  Street: 1800 Wazee St., Suite 500                  City: Denver, CO 80202                  Attn: Global Energy                  Phone: (800) 566-2706                  Email: globalenergyops@prologis.com</p>	<p><b>All Notices:</b>                  Street: 801 S Grand, Suite 400                  City: Los Angeles, CA 90017                  Attn: Executive Director                  Phone: (213) 269-5870                  E-mail: tbardacke@cleanpoweralliance.org</p>
<p><b>Reference Numbers:</b>                  Duns: TBD                  Federal Tax ID Number: TBD</p>	<p><b>Reference Numbers:</b>                  Duns:                  Federal Tax ID Number:</p>
<p><b>Invoices:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Invoices:</b>                  Attn: CPA Settlements                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Scheduling: TBD</b>                  Attn: Day Ahead Scheduling                  Phone: (817) 303-1104                  Email: TenaskaComm@tnsk.com</p>
<p><b>Confirmations: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Confirmations:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Payments:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>                  BNK: Bank of America                  ABA: 111000012                  ACCT: XXXXXX8368</p>	<p><b>Wire Transfer:</b>                  BNK: River City Bank                  ABA: 121133416                  ACCT: XXXXXX8042</p>

## EXHIBIT O

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent's instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced

foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CPA that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience necessary to satisfy the definition of Permitted Transferee in the PPA (a "Permitted Transferee"), *provided, further*, that it is acknowledged and agreed that [\_\_\_\_\_] [*Insert name of initial Collateral Agent*] is a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such

purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, for so long as it is or was entitled to under the PPA or Replacement PPA.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice given by Collateral Agent to Project Company pursuant to the Financing Documents relating to an event of default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions.

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. 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.

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

## **SCHEDULE A**

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

**EXHIBIT P**  
**MATERIAL PERMITS**

<i>No.</i>	<i>Permits</i>
1	County of Los Angeles Fire Department Permit
2	City of Whittier Building & Safety Permit

**EXHIBIT Q**

**RESERVED**

Exhibit Q – 1

**EXHIBIT R**

**METERING DIAGRAM**

[To be inserted by Seller upon date of Financial Close reflected in the Cover Sheet]

## EXHIBIT S

### Supply Chain Code of Conduct

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

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

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

#### 1. **Freely Chosen Employment**

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

#### 2. **Young Workers**

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

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

**3. Working Hours**

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

**4. Wages and Benefits**

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

**5. Humane Treatment**

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

**6. Non-Discrimination/Non-Harassment**

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

**7. Freedom of Association**

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

**8. Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

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## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** ESCA-PLD-CPA-EL Segundo LLC, a Delaware limited liability company

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

**Description of Facility:** A 0.64 MW photovoltaic generating facility located on the rooftop of a commercial industrial warehousing and logistics building at 2805 West El Segundo Boulevard

**Milestones:**

Milestone	Expected Date for Completion
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Not Applicable
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase 1: Complete Phase 2: 10/25/22
<b>Executed Interconnection Agreement</b>	11/1/2022
<b>Financial Close</b>	██████████
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	7/17/2023
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</b>	10/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	12/23/2023
<b>Expected Commercial Operation Date</b>	12/30/2023

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

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	1,408
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 0.64 MW of total Facility capacity

**Guaranteed Construction Start Date:** 4/24/2023

**Guaranteed Commercial Operation Date:** 12/30/2023

**Contract Price:** The Contract Price shall be:

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

**Seller's Assumed Tax Credit Rate:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%) and/or the PTC at \$0.027/kWh.

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Development Security:** \$60/kW of Guaranteed Capacity

**Performance Security:** \$60/kW of Guaranteed Capacity

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (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 3.14(c).

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

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

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

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

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

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

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

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

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

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

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Party to deliver less Facility Energy than the full amount forecasted in accordance with Section 4.4 for a period of time; and

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

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

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

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

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

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

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

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Compliance Actions**” has the meaning set forth in Section 3.14(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

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

“**Consent to Collateral Assignment**” has the meaning set forth in Exhibit O.

“**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; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that Seller will claim a Tax Credit rate for the Generating Facility that is higher than Seller’s Assumed Tax Credit Rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by (a) \$ [REDACTED]/MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%) or (b) \$ [REDACTED]/MWh for each \$0.0005/kWh that the PTC rate is above \$0.027/kWh.

“**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.

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

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

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

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

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

Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

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

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

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

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

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

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

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

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

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

**“Deemed Delivered Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time

Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

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

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

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

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

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

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

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

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

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

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

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

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

“**Energy**” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.6.

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

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

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

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

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

“**Facility**” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

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

“**Facility Meter**” means the CAISO approved 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 Facility Energy delivered to the Facility Metering 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 Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

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

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

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

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

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

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

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.7(a).

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

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

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

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

**“Green-e Energy National Standard”** means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated November 12, 2019, as may be further amended from time to time.

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

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

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

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.6.

**“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(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection 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 0.64 MW AC.

**“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- with an outlook designation of “stable” from S&P or A3 with an outlook designation

of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

“**Lost Output**” has the meaning set forth in Section 4.6.

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

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

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

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than zero dollars (\$0).

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

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

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

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

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

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

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

(a) A tangible net worth of not less than 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 facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

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

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

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

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

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

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

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

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

**“Product”** has the meaning on the Cover Sheet.

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

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

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

**“Real-Time Forecast”** has the meaning set forth in Section 4.3(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 Future Environmental Attribute.

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

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

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

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

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

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

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, 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’s WREGIS Account**” has the meaning set forth in Section 4.7(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.

“**Site**” means the rooftop on 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.

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

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

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

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

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

“**Test Energy Rate**” has the meaning set forth in Section 3.7.

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

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

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

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

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

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

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(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;

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;

(h) 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;

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

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

(k) 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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1. **Contract Term.**

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

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

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“**Approval Application**”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits 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 received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

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

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

(h) 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;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or the Facility Energy; and

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

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

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

2.4. **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), 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 in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. 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 Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3. **Compensation.**

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

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

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

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

3.4. **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered from the Facility may deviate from the amount of Scheduled Energy, and that 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.

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

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Section 3.6(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 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7. **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 from the 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 for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price, and, after ninety (90) days, zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8. **[Reserved]**.

3.9. **[Reserved]**.

3.10. **[Reserved]**.

3.11. **CEC Certification and Verification**. Subject to Section 3.14, Seller shall take all necessary steps including 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.

3.12. **Eligibility**. Subject to Section 3.14, 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 3.12 means efforts consistent with and subject to Section 3.14.

3.13. **California Renewables Portfolio Standard**. Subject to Section 3.14, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.14. **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 3.14, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.14 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.

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

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1. **Delivery**.

(a) **Energy**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

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

#### 4.2. **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer shall be 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 Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Facility 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. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of (i) the available capacity of the Facility, and (ii) the hourly Facility Energy for each day of the following month (items (i)-(ii) collectively referred to as the "**Forecasted Product**") in a form substantially similar to Exhibit F-2 (the "**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 and Buyer's SC (if applicable) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (the "**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. 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 Forecast. 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 (the "**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 / one (1) MWh 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 Facility 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 4.4(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 SC 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 Forced Facility Outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the Real-Time forecast required in Section 4.3(d), and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Facility Energy for such hour set forth in the Monthly Forecast, and (ii) the actual Facility 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of Seller being aware of the occurrence of such Forced Facility Outage.

#### 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 or Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

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

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

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonable 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. **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 4.5(a)(i). Seller shall limit maintenance repairs performed pursuant to this Section 4.5(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.

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

4.6. **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has

achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of: (a) any Deemed Delivered Energy plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub 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 Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.7. **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.14, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. 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 posted by WREGIS and delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.7, 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 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

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

## ARTICLE 5 TAXES

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

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

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3. **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including by reserving interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for Buyer's sole use, (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 ID, 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. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

## **ARTICLE 7 METERING**

7.1. **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or the Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2. **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

**ARTICLE 8**  
**INVOICING AND PAYMENT; CREDIT**

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of the subsequent month for Product delivered during the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, Adjusted Energy Production, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall provide Seller with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2. **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7. **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8. **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a)

the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## **ARTICLE 9 NOTICES**

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

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

## **ARTICLE 10 FORCE MAJEURE**

### 10.1. **Definition.**

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

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

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); [(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event]; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

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

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance

of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (if such termination occurs prior to or as of the Commercial Operation Date), or (ii) the Termination Payment (if such termination occurs following the Commercial Operation Date), as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall 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 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 after subtracting for the estimated costs of decommissioning and sale of assets) of 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6. **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

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

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7. **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2. **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED

ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) is located within an eligible DAC.

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

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 14 ASSIGNMENT

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

14.2. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O (“**Consent to Collateral Assignment**”).

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

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and 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 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 (“**Buyer Assignment Agreement**”); *provided*, 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 Buyer 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.

14.6. **Sale or Transfer of Site**. Notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign or transfer this Agreement to any Person to whom the owner of the building on which the Facility is located has sold, conveyed, transferred, or assigned its interest in the building on which the Facility is located. In the event of an assignment of this Agreement in connection with the transfer or sale of the Facility, Seller shall provide Buyer Notice at least five (5) Business Days after the date of such transfer, which Notice shall include a written agreement signed by the Person to which Seller has sold or transferred its interests in the Facility following a sale or transfer of the building on which the Facility is located that provides that such Person has assumed all of Seller's obligations and liabilities under this Agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1. **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

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

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

## **ARTICLE 16 INDEMNIFICATION**

### 16.1. **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

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

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

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

## **ARTICLE 17 INSURANCE**

### **17.1. Insurance.**

(a) **General Liability.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount

of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

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

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

(f) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through 17.1(f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any

manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

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

18.2. Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party

unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or 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, directors, 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.

**ESCA-PLD-CPA-EL Segundo 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:** El Segundo

**Site includes all or some of the following APNs:** 4056032055, 4056032053

**City:** Hawthorne

**County:** Los Angeles

**Zip Code:** 90250

**Latitude and Longitude:** Lat: 33.9179152, Long: -118.32

**Facility Description:** See Cover Sheet

**Delivery Point:** Existing 12kV Distribution Line (Coordinates: 33.919442, -118.323803)

**PNode:** ELNIDO\_2\_N012

**Transmission Provider:** Southern California Edison

**Additional Information:** See Site diagram on following page



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1.b. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

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

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve

Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.b.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
  4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
    - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - b. a Force Majeure Event occurs; or
    - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

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

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

**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

## 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, 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.

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

c. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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.

e. 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 (f) 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 from Buyer. 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.

f. 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.

g. 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.

h. 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.

i. 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:

Executive Summary.

Facility description.

- 1) Site plan of the Facility.
- 2) Description of any material planned changes to the Facility or the site.
- 3) Gantt chart schedule showing progress on achieving each of the Milestones.
- 4) Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 5) Forecast of activities scheduled for the current calendar quarter.
- 6) Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 7) List of issues that are reasonably likely to affect Seller's Milestones.
- 8) 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.
- 9) Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 10) 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.
- 11) Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 12) Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**ANNUAL EXPECTED AVAILABLE FACILITY ENERGY**

[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 FACILITY ENERGY**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6, 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; provided the market value of Replacement Green Attributes shall be equal to the average of price quotations from no less than three (3) reasonably selected brokers.

D = the Contract Price, in \$/MWh

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

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

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

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

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

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

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

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

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

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

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

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of the Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**



**The Bank of Nova Scotia, NY Agency**

Trade Service Center  
250 Vesey Street (24<sup>th</sup> Floor)  
New York, NY 10281  
Tel: 212 225 5000  
Fax: 212 225 6464  
SWIFT: NOSCUS33TPS

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
801 S Grand, Suite 400  
Los Angeles, CA 90017

Applicant:

[Name & Address]

Amount: US\$[XXXXXXXX]

By the order of \_\_\_\_\_ (“Applicant”), we, The Bank of Nova Scotia, New York Agency (“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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”). We have been informed by the applicant that this Letter of Credit is issued 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 compliant 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 officer, in the form attached hereto as Exhibit A "Drawing Certificate," 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 (212) 225-6464 or such other number as specified from time-to-time by the Issuer. The Beneficiary may contact us at (212) 225-5418 to confirm receipt of the facsimile transmission. Beneficiary's failure to seek such a telephone confirmation does not affect our obligation to honor such presentation.

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 original documents.

Issuer hereby agrees that all documents 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 250 Vesey Street, 24th Floor, New York, NY 10281, Attn: Trade Services Center. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a compliant presentation. 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 automatically 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 from the present Expiration Date hereof and upon each anniversary for such date, 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 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 Trade Services Center at 250 Vesey Street, 24th Floor, New York, NY 10281, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Trade Services Center at (212) 225-5418 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

The Bank of Nova Scotia, New York Agency  
250 Vesey Street, 24th Floor  
New York, NY 10281, Attn: Trade Services Center

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Clean Power Alliance of Southern California, a California joint powers authority, 801 S Grand, Suite 400, Los Angeles, CA 90017, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by The Bank of Nova Scotia, New York Agency (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 Officer

Date \_\_\_\_\_

*We have reviewed the language of the above standby letter of credit draft and hereby request The Bank of Nova Scotia, New York Agency to issue a standby letter of credit as drafted.*

*Approved*

*Prologis L.P.*

---

*Signature*

## EXHIBIT L

### FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; *provided*, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned

Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

**2. Assignment Early Termination.**

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
  - (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
  - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; *provided*, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections  [Severability],  [Counterparts],  [Amendments] and  [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**5. Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....  
.....  
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>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**  
**RESERVED**

Exhibit M - 1

**EXHIBIT N**

**NOTICES**

<p><b>ESCA-PLD-CPA-EL Segundo 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>                  Street: 1800 Wazee St., Suite 500                  City: Denver, CO 80202                  Attn: Global Energy                  Phone: (800) 566-2706                  Email: globalenergyops@prologis.com</p>	<p><b>All Notices:</b>                  Street: 801 S Grand, Suite 400                  City: Los Angeles, CA 90017                  Attn: Executive Director                  Phone: (213) 269-5870                  E-mail: tbardacke@cleanpoweralliance.org</p>
<p><b>Reference Numbers:</b>                  Duns: TBD                  Federal Tax ID Number: TBD</p>	<p><b>Reference Numbers:</b>                  Duns:                  Federal Tax ID Number:</p>
<p><b>Invoices:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Invoices:</b>                  Attn: CPA Settlements                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Scheduling: TBD</b>                  Attn: Day Ahead Scheduling                  Phone: (817) 303-1104                  Email: TenaskaComm@tnsk.com</p>
<p><b>Confirmations: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Confirmations:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Payments:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>                  BNK: Bank of America                  ABA: 111000012                  ACCT: XXXXXX8368</p>	<p><b>Wire Transfer:</b>                  BNK: River City Bank                  ABA: 121133416                  ACCT: XXXXXX8042</p>

## EXHIBIT O

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent's instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced

foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CPA that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience necessary to satisfy the definition of Permitted Transferee in the PPA (a "Permitted Transferee"), *provided, further*, that it is acknowledged and agreed that [\_\_\_\_\_] [*Insert name of initial Collateral Agent*] is a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such

purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, for so long as it is or was entitled to under the PPA or Replacement PPA.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice given by Collateral Agent to Project Company pursuant to the Financing Documents relating to an event of default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions.

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. 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.

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

## **SCHEDULE A**

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

**EXHIBIT P**  
**MATERIAL PERMITS**

<i>No.</i>	<i>Permits</i>
1	County of Los Angeles Fire Department Permit
2	City of Hawthorne Department of Building and Safety Permit

**EXHIBIT Q**  
**RESERVED**

Exhibit Q – 1

**EXHIBIT R**

**METERING DIAGRAM**

[To be inserted by Seller upon date of Financial Close reflected in the Cover Sheet]

## EXHIBIT S

### Supply Chain Code of Conduct

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

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

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

#### 1. **Freely Chosen Employment**

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

#### 2. **Young Workers**

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

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

**3. Working Hours**

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

**4. Wages and Benefits**

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

**5. Humane Treatment**

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

**6. Non-Discrimination/Non-Harassment**

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

**7. Freedom of Association**

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

**8. Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

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## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** ESCA-PLD-CPA-Wilmington2 LLC, a Delaware limited liability company

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

**Description of Facility:** A 0.6 MW photovoltaic generating facility located on the rooftop of a commercial industrial warehousing and logistics building at 2267 South Wilmington Avenue

**Milestones:**

Milestone	Expected Date for Completion
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Not Applicable
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase 1: Complete Phase 2: 10/25/22
<b>Executed Interconnection Agreement</b>	11/1/2022
<b>Financial Close</b>	██████████
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	7/17/2023
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</b>	10/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	12/23/2023
<b>Expected Commercial Operation Date</b>	12/30/2023

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

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	1,457
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 0.6 MW of total Facility capacity

**Guaranteed Construction Start Date:** 4/24/2023

**Guaranteed Commercial Operation Date:** 12/30/2023

**Contract Price:** The Contract Price shall be:

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

**Seller's Assumed Tax Credit Rate:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%) and/or the PTC at \$0.027/kWh.

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Development Security:** \$60/kW of Guaranteed Capacity

**Performance Security:** \$60/kW of Guaranteed Capacity

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (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 3.14(c).

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

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Approval Application**” has the meaning set forth in Section 2.1(c).

“**Approved Forecast Vendor**” means (x) any of the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Party to deliver less Facility Energy than the full amount forecasted in accordance with Section 4.4 for a period of time; and

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility did not submit a Self-Schedule for the MWs subject to the reduction.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time, set forth in such instruction for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using relevant Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default, in each case that directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Buyer Default”** means an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 18.2.

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

**“CAISO”** means the California Independent System Operator Corporation or any successor entity performing similar functions.

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Commercial Operation”** has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

**“CAISO Costs”** means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

**“CAISO Revenues”** means the credits and other payments incurred or received by Seller, as the Facility’s Scheduling Coordinator, as a result of Scheduling or Facility Energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” means the date Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“**Compliance Actions**” has the meaning set forth in Section 3.14(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Consent to Collateral Assignment**” has the meaning set forth in Exhibit O.

“**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; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that Seller will claim a Tax Credit rate for the Generating Facility that is higher than Seller’s Assumed Tax Credit Rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by (a) \$ [REDACTED] /MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%) or (b) \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above \$0.027/kWh.

“**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.

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**CPUC Approval**” means a final and non-appealable order, decision, or disposition of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC order, decision, or disposition containing such findings becomes final and non-appealable.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Curtailed Energy**” means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the Real-Time Forecast, expressed in MWh, applicable to the Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Curtailment Period; *provided*, if the

Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

**“Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Daily Delay Damages”** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

**“Damage Payment”** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

**“Day-Ahead Forecast”** has the meaning set forth in Section 4.3(c).

**“Day-Ahead Market”** has the meaning set forth in the CAISO Tariff.

**“Day-Ahead Schedule”** has the meaning set forth in the CAISO Tariff.

**“Deemed Delivered Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time

Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (i) cash, or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

“**Early Termination Date**” has the meaning set forth in Section 11.2.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.6.

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess MWh”** has the meaning set forth in Section 3.3(b).

**“Expected Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

**“Expected Construction Start Date”** has the meaning set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

**“Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

**“Facility Energy”** means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

**“Facility Meter”** means the CAISO approved 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 Facility Energy delivered to the Facility Metering 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 Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location(s) of the Facility Meter(s) shown in Exhibit R.

**“FERC”** means the Federal Energy Regulatory Commission or any successor government agency.

**“Fifteen Minute Market”** or **“FMM”** has the meaning set forth in the CAISO Tariff.

**“Financial Close”** means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forecasted Product”** has the meaning set forth in Section 4.3(b).

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.7(a).

**“Future Environmental Attributes”** shall mean any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“**Green Tag Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“**Green Tags**” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy.

“**Green-e Certified**” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“**Green-e Energy National Standard**” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated November 12, 2019, as may be further amended from time to time.

“**Guaranteed Capacity**” means the generating capacity of the Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.6.

“**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(a).

“**Indemnifying Party**” has the meaning set forth in Section 16.1(a).

“**Initial Synchronization**” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection 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 0.6 MW AC.

**“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- with an outlook designation of “stable” from S&P or A3 with an outlook designation

of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.6.

“**Material Permits**” means all permits required for Seller to commence construction, as set forth on Exhibit P.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (i) any Affiliate of Seller, or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than 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 facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category**” means PCC1, PCC2 or PCC3, as applicable.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Product”** has the meaning on the Cover Sheet.

**“Production Tax Credit”** or **“PTC”** means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

**“Progress Report”** means a progress report including the items set forth in Exhibit E.

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the solar powered electric generating industry during the relevant time period with respect to grid-interconnected generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, distributed-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“Real-Time Forecast”** has the meaning set forth in Section 4.3(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 Future Environmental Attribute.

“**Replacement Energy**” has the meaning set forth in Exhibit G.

“**Replacement Green Attributes**” has the meaning set forth in Exhibit G.

“**Replacement Product**” has the meaning set forth in Exhibit G.

“**Requested Confidential Information**” has the meaning set forth in Section 18.2.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, 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’s WREGIS Account**” has the meaning set forth in Section 4.7(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.

“**Site**” means the rooftop on 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.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Supply Chain Code**” has the meaning in Exhibit S.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.7.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WECC**” means the Western Electricity Coordinating Council or its successor.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(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;

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;

(h) 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;

(i) references to any amount of money shall mean a reference to the amount in United States Dollars;

(j) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(k) 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

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1. **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6 Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“**Approval Application**”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

2.2. **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits 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 received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(h) 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;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or the Facility Energy; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3. **Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4. **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), 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 in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. 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 Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3. **Compensation.**

(a) During the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for each Contract Year. If at any point in any Contract Year, the amount of Facility Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(b) If during any Settlement Interval, Seller delivers Facility Energy in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(c) During the Delivery Term, Seller shall receive no compensation from Buyer for Curtailed Energy or Facility Energy that is delivered in violation of a Curtailment Order.

(d) **Tax Credits.** The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

3.4. **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered from the Facility may deviate from the amount of Scheduled Energy, and that 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.

3.5. **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Section 3.6(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 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7. **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 from the 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 for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price, and, after ninety (90) days, zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8. **[Reserved]**.

3.9. **[Reserved]**.

3.10. **[Reserved]**.

3.11. **CEC Certification and Verification**. Subject to Section 3.14, Seller shall take all necessary steps including 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.

3.12. **Eligibility**. Subject to Section 3.14, 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 3.12 means efforts consistent with and subject to Section 3.14.

3.13. **California Renewables Portfolio Standard**. Subject to Section 3.14, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.14. **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 3.14, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.14 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.

3.15. **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1. **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products that may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

#### 4.2. **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer shall be 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 Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Facility 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. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of (i) the available capacity of the Facility, and (ii) the hourly Facility Energy for each day of the following month (items (i)-(ii) collectively referred to as the "**Forecasted Product**") in a form substantially similar to Exhibit F-2 (the "**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 and Buyer's SC (if applicable) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (the "**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. 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 Forecast. 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 (the "**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 / one (1) MWh 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 Facility 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 4.4(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 SC 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 Forced Facility Outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the Real-Time forecast required in Section 4.3(d), and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Facility Energy for such hour set forth in the Monthly Forecast, and (ii) the actual Facility 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of Seller being aware of the occurrence of such Forced Facility Outage.

#### 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 or Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall compensate Seller for Deemed Delivered Energy in accordance with Section 3.3.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonable 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. **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 4.5(a)(i). Seller shall limit maintenance repairs performed pursuant to this Section 4.5(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.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.6. **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has

achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of: (a) any Deemed Delivered Energy plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub 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 Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.7. **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.14, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. 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 posted by WREGIS and delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.7, 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 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

## ARTICLE 5 TAXES

5.1. **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2. **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1. **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2. **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3. **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including by reserving interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for Buyer's sole use, (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 ID, 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. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

## **METERING**

7.1. **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or the Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2. **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of the subsequent month for Product delivered during the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, Adjusted Energy Production, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall provide Seller with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2. **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5. **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6. **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7. **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8. **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a)

the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9. **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE 9 NOTICES**

9.1. **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

### 10.1. **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); [(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event]; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2. **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4. **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance

of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1. **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1.b of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("**Cure Plan**") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (if such termination occurs prior to or as of the Commercial Operation Date), or (ii) the Termination Payment (if such termination occurs following the Commercial Operation Date), as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3. **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall 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 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 after subtracting for the estimated costs of decommissioning and sale of assets) of 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4. **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5. **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6. **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7. **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2. **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED

ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1. **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) is located within an eligible DAC.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3. **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4. **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof.

## ARTICLE 14 ASSIGNMENT

14.1. **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including reasonable attorneys’ fees.

14.2. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O (“**Consent to Collateral Assignment**”).

14.3. **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and 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 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 (“**Buyer Assignment Agreement**”); *provided*, 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 Buyer 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.

14.6. **Sale or Transfer of Site**. Notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign or transfer this Agreement to any Person to whom the owner of the building on which the Facility is located has sold, conveyed, transferred, or assigned its interest in the building on which the Facility is located. In the event of an assignment of this Agreement in connection with the transfer or sale of the Facility, Seller shall provide Buyer Notice at least five (5) Business Days after the date of such transfer, which Notice shall include a written agreement signed by the Person to which Seller has sold or transferred its interests in the Facility following a sale or transfer of the building on which the Facility is located that provides that such Person has assumed all of Seller's obligations and liabilities under this Agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1. **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

15.2. **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3. **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## **ARTICLE 16 INDEMNIFICATION**

### 16.1. **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an "**IP Indemnity Claim**").

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2. **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 17 INSURANCE**

### **17.1. Insurance.**

(a) **General Liability.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount

of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance. During the construction of the Facility prior to the Commercial Operation Date, Seller shall maintain, or cause to be maintained, at its sole expense construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(f) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through 17.1(f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any

manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(g) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1. Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2. Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party

unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or 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, directors, 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.

**ESCA-PLD-CPA-Wilmington2 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:** Wilmington 2

**Site includes all or some of the following APNs:** 7315031020

**City:** Carson

**County:** Los Angeles

**Zip Code:** 90745

**Latitude and Longitude:** Lat: 33.8208558, Long: -118.2466321

**Facility Description:** See Cover Sheet

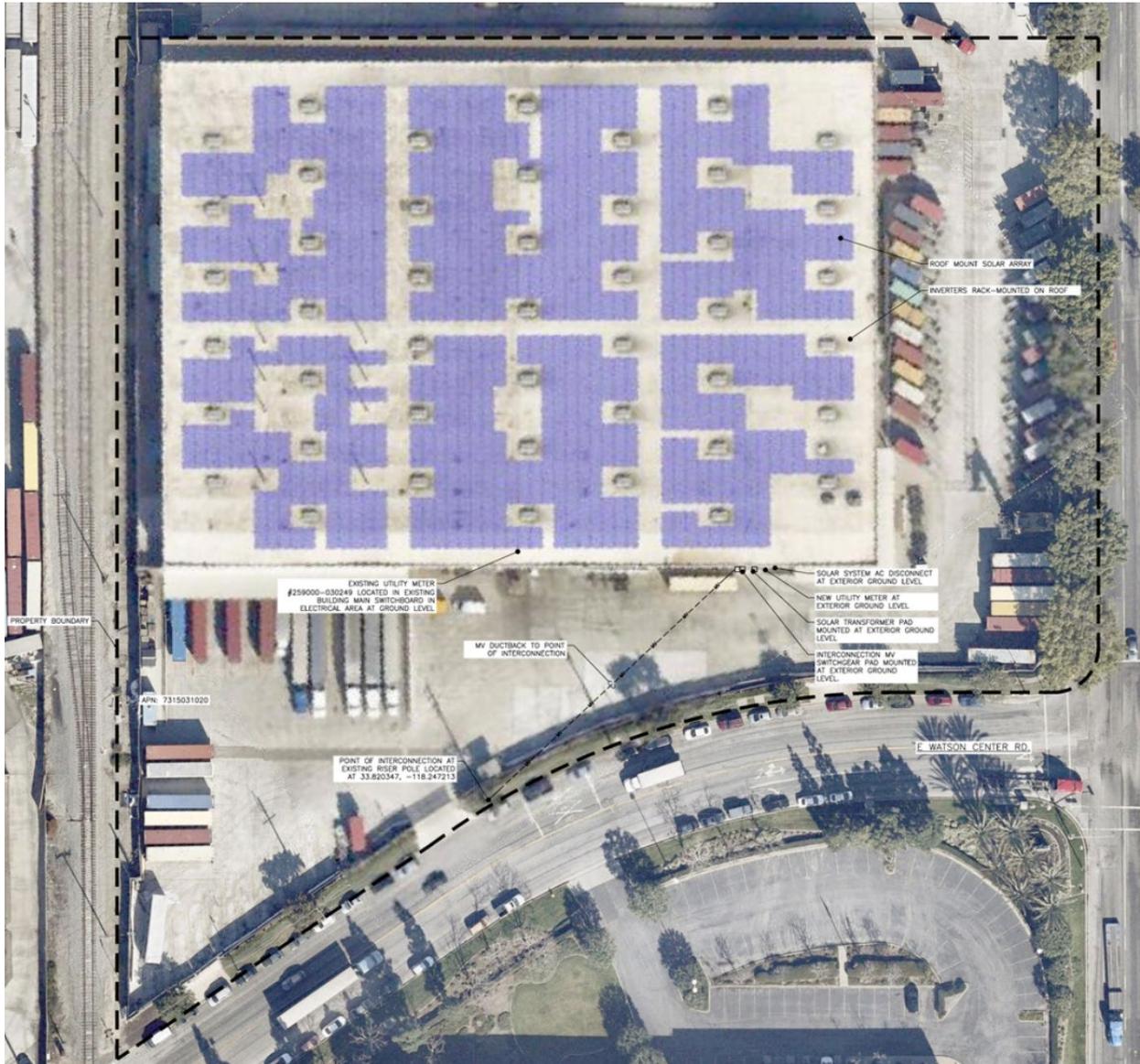
**Delivery Point:** Existing 12kV Distribution Line (Coordinates: 33.820347, -118.247213)

**PNode:** ARCO1G\_7\_B1

**Transmission Provider:** Southern California Edison

**Additional Information:** See Site diagram on following page

# Facility Description



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1.b. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

#### 2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve

Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.b.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
  4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
    - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - b. a Force Majeure Event occurs; or
    - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
    - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.
  
6. **Buyer's Right to Draw on Development Security.** If Seller elects to extend the Guaranteed Construction Start Date pursuant to Section 1.b of this Exhibit B and/or if Seller elects to extend the Guaranteed Commercial Operation Date pursuant to Section 2.b of this Exhibit B, but Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, then Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof and Seller shall be required to replenish the Development Security in an amount equal to Buyer's draw.

**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

## 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, 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.

b. Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

c. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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.

e. 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 (f) 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 from Buyer. 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.

f. 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.

g. 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.

h. 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.

i. 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:

Executive Summary.

Facility description.

- 1) Site plan of the Facility.
- 2) Description of any material planned changes to the Facility or the site.
- 3) Gantt chart schedule showing progress on achieving each of the Milestones.
- 4) Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 5) Forecast of activities scheduled for the current calendar quarter.
- 6) Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 7) List of issues that are reasonably likely to affect Seller's Milestones.
- 8) 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.
- 9) Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 10) 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.
- 11) Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 12) Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**ANNUAL EXPECTED AVAILABLE FACILITY ENERGY**

[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 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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MAR																									
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6, 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; provided the market value of Replacement Green Attributes shall be equal to the average of price quotations from no less than three (3) reasonably selected brokers.

D = the Contract Price, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C - D)

**“Adjusted Energy Production”** shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

**“Replacement Energy”** means electrical energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a)  $(A - B)$ , (b)  $(C - D)$  or (c)  $[(A - B) * (C - D)] - (E + F)$ , yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

- 1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- 2. Seller has installed equipment for the Facility with an Installed Capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
- 3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_[DATE]\_\_\_.
- 4. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
- 5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.
- 6. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The installed nameplate capacity of the Facility is \_\_ MW AC ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of the Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**



**The Bank of Nova Scotia, NY Agency**

Trade Service Center  
250 Vesey Street (24<sup>th</sup> Floor)  
New York, NY 10281  
Tel: 212 225 5000  
Fax: 212 225 6464  
SWIFT: NOSCUS33TPS

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
801 S Grand, Suite 400  
Los Angeles, CA 90017

Applicant:

[Name & Address]

Amount: US\$[XXXXXXXX]

By the order of \_\_\_\_\_ (“Applicant”), we, The Bank of Nova Scotia, New York Agency (“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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”). We have been informed by the applicant that this Letter of Credit is issued 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 compliant 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 officer, in the form attached hereto as Exhibit A "Drawing Certificate," 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 (212) 225-6464 or such other number as specified from time-to-time by the Issuer. The Beneficiary may contact us at (212) 225-5418 to confirm receipt of the facsimile transmission. Beneficiary's failure to seek such a telephone confirmation does not affect our obligation to honor such presentation.

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 original documents.

Issuer hereby agrees that all documents 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 250 Vesey Street, 24th Floor, New York, NY 10281, Attn: Trade Services Center. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a compliant presentation. 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 automatically 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 from the present Expiration Date hereof and upon each anniversary for such date, 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 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 Trade Services Center at 250 Vesey Street, 24th Floor, New York, NY 10281, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Trade Services Center at (212) 225-5418 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

The Bank of Nova Scotia, New York Agency  
250 Vesey Street, 24th Floor  
New York, NY 10281, Attn: Trade Services Center

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Clean Power Alliance of Southern California, a California joint powers authority, 801 S Grand, Suite 400, Los Angeles, CA 90017, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by The Bank of Nova Scotia, New York Agency (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 Officer

Date \_\_\_\_\_

*We have reviewed the language of the above standby letter of credit draft and hereby request The Bank of Nova Scotia, New York Agency to issue a standby letter of credit as drafted.*

*Approved*

*Prologis L.P.*

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*Signature*

## EXHIBIT L

### FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; *provided*, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned

Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

**2. Assignment Early Termination.**

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
  - (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
  - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; *provided*, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections  [Severability],  [Counterparts],  [Amendments] and  [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**5. Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....  
.....  
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>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**  
**RESERVED**

Exhibit M - 1

**EXHIBIT N**

**NOTICES**

<p><b>ESCA-PLD-CPA-Wilmington2 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>                  Street: 1800 Wazee St., Suite 500                  City: Denver, CO 80202                  Attn: Global Energy                  Phone: (800) 566-2706                  Email: globalenergyops@prologis.com</p>	<p><b>All Notices:</b>                  Street: 801 S Grand, Suite 400                  City: Los Angeles, CA 90017                  Attn: Executive Director                  Phone: (213) 269-5870                  E-mail: tbardacke@cleanpoweralliance.org</p>
<p><b>Reference Numbers:</b>                  Duns: TBD                  Federal Tax ID Number: TBD</p>	<p><b>Reference Numbers:</b>                  Duns:                  Federal Tax ID Number:</p>
<p><b>Invoices:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Invoices:</b>                  Attn: CPA Settlements                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Scheduling: TBD</b>                  Attn: Day Ahead Scheduling                  Phone: (817) 303-1104                  Email: TenaskaComm@tnsk.com</p>
<p><b>Confirmations: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Confirmations:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Payments:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>                  BNK: Bank of America                  ABA: 111000012                  ACCT: XXXXXX8368</p>	<p><b>Wire Transfer:</b>                  BNK: River City Bank                  ABA: 121133416                  ACCT: XXXXXX8042</p>

## EXHIBIT O

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent's instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced

foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CPA that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience necessary to satisfy the definition of Permitted Transferee in the PPA (a "Permitted Transferee"), *provided, further*, that it is acknowledged and agreed that [\_\_\_\_\_] [*Insert name of initial Collateral Agent*] is a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such

purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, for so long as it is or was entitled to under the PPA or Replacement PPA.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice given by Collateral Agent to Project Company pursuant to the Financing Documents relating to an event of default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions.

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. 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.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p>
<p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>	<p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>	

## **SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

**EXHIBIT P**  
**MATERIAL PERMITS**

<i>No.</i>	<i>Permits</i>
1	City of Carson Plan Check
2	City of Carson Fire Plan Check
3	LA County Building Permit
4	LA County Electrical Permit

**EXHIBIT Q**  
**RESERVED**

Exhibit Q – 1

**EXHIBIT R**

**METERING DIAGRAM**

[To be inserted by Seller upon date of Financial Close reflected in the Cover Sheet]

## EXHIBIT S

### Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

#### 1. **Freely Chosen Employment**

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

#### 2. **Young Workers**

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student

workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

**3. Working Hours**

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

**4. Wages and Benefits**

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

**5. Humane Treatment**

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

**6. Non-Discrimination/Non-Harassment**

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

**7. Freedom of Association**

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

**8. Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

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## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** ESCA-PLD-CPA-Dominguez LLC, a Delaware limited liability company

**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility:** A 0.960 MW photovoltaic generating facility located on the top of a commercial industrial warehousing and logistics building at 2132 East Dominguez Street

**Milestones:**

Milestone	Expected Date for Completion
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	Not Applicable
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase 1: Complete Phase 2: 10/25/22
<b>Executed Interconnection Agreement</b>	11/1/2022
<b>Financial Close</b>	██████████
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	7/17/2023
<b>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</b>	10/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	12/23/2023
<b>Expected Commercial Operation Date</b>	12/30/2023

**Delivery Term:** Fifteen (15) Contract Years

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	2,380
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 0.960 MW of total Facility capacity

**Guaranteed Construction Start Date:** 4/24/2023

**Guaranteed Commercial Operation Date:** 12/30/2023

**Contract Price:** The Contract Price shall be:

<b>Contract Year</b>	<b>Contract Price (\$/MWh)</b>
1 – 15	\$ ██████/MWh (flat) with no escalation

**Seller's Assumed Tax Credit Rate:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%) and/or the PTC at \$0.027/kWh.

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes
  - Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer

**Development Security:** \$60/kW of Guaranteed Capacity

**Performance Security:** \$60/kW of Guaranteed Capacity

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (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 3.14(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Approval Application**” has the meaning set forth in Section 2.1(c).

“**Approved Forecast Vendor**” means (x) any of the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Party to deliver less Facility Energy than the full amount forecasted in accordance with Section 4.4 for a period of time; and

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility did not submit a Self-Schedule for the MWs subject to the reduction.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time, set forth in such instruction for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using relevant Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default, in each case that directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Buyer Default”** means an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 18.2.

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

**“CAISO”** means the California Independent System Operator Corporation or any successor entity performing similar functions.

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Commercial Operation”** has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

**“CAISO Costs”** means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

**“CAISO Revenues”** means the credits and other payments incurred or received by Seller, as the Facility’s Scheduling Coordinator, as a result of Scheduling or Facility Energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission or its successor agency.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” means the date Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“**Compliance Actions**” has the meaning set forth in Section 3.14(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Consent to Collateral Assignment**” has the meaning set forth in Exhibit O.

“**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; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that Seller will claim a Tax Credit rate for the Generating Facility that is higher than Seller’s Assumed Tax Credit Rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by (a) \$ [REDACTED]/MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%) or (b) \$ [REDACTED]/MWh for each \$0.0005/kWh that the PTC rate is above \$0.027/kWh.

“**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.

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“**CPUC Approval**” means a final and non-appealable order, decision, or disposition of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC order, decision, or disposition containing such findings becomes final and non-appealable.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Cure Plan**” has the meaning set forth in Section 11.1(b)(iii).

“**Curtailed Energy**” means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the Real-Time Forecast, expressed in MWh, applicable to the Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Curtailment Period; *provided*, if the

Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

**“Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Daily Delay Damages”** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

**“Damage Payment”** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

**“Day-Ahead Forecast”** has the meaning set forth in Section 4.3(c).

**“Day-Ahead Market”** has the meaning set forth in the CAISO Tariff.

**“Day-Ahead Schedule”** has the meaning set forth in the CAISO Tariff.

**“Deemed Delivered Energy”** means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time

Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (i) cash, or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

“**Disclosing Party**” has the meaning set forth in Section 18.2.

“**Early Termination Date**” has the meaning set forth in Section 11.2.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

“**Eligible Intermittent Resource Protocol**” or “**EIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.6.

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess MWh”** has the meaning set forth in Section 3.3(b).

**“Expected Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

**“Expected Construction Start Date”** has the meaning set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

**“Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

**“Facility Energy”** means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

**“Facility Meter”** means the CAISO approved 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 Facility Energy delivered to the Facility Metering 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 Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location(s) of the Facility Meter(s) shown in Exhibit R.

**“FERC”** means the Federal Energy Regulatory Commission or any successor government agency.

**“Fifteen Minute Market”** or **“FMM”** has the meaning set forth in the CAISO Tariff.

**“Financial Close”** means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forecasted Product”** has the meaning set forth in Section 4.3(b).

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.7(a).

**“Future Environmental Attributes”** shall mean any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Green Tags”** means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy.

**“Green-e Certified”** means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

**“Green-e Energy National Standard”** means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.5, updated November 12, 2019, as may be further amended from time to time.

**“Guaranteed Capacity”** means the generating capacity of the Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet.

**“Guaranteed Commercial Operation Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Construction Start Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.6.

**“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(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection 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 0.960 MW AC.

**“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- with an outlook designation of “stable” from S&P or A3 with an outlook designation

of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.6.

“**Material Permits**” means all permits required for Seller to commence construction, as set forth on Exhibit P.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (i) any Affiliate of Seller, or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than 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 facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a).

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category**” means PCC1, PCC2 or PCC3, as applicable.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Product”** has the meaning on the Cover Sheet.

**“Production Tax Credit”** or **“PTC”** means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

**“Progress Report”** means a progress report including the items set forth in Exhibit E.

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the solar powered electric generating industry during the relevant time period with respect to grid-interconnected generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, distributed-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“Real-Time Forecast”** has the meaning set forth in Section 4.3(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 Future Environmental Attribute.

“**Replacement Energy**” has the meaning set forth in Exhibit G.

“**Replacement Green Attributes**” has the meaning set forth in Exhibit G.

“**Replacement Product**” has the meaning set forth in Exhibit G.

“**Requested Confidential Information**” has the meaning set forth in Section 18.2.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, 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’s WREGIS Account**” has the meaning set forth in Section 4.7(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.

“**Site**” means the rooftop on 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.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Supply Chain Code**” has the meaning in Exhibit S.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm

to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.7.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving System Energy onto the Transmission System.

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WECC**” means the Western Electricity Coordinating Council or its successor.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(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;

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;

(h) 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;

(i) references to any amount of money shall mean a reference to the amount in United States Dollars;

(j) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(k) 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

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1. **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6 Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“**Approval Application**”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

2.2. **Conditions Precedent.** The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits 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 received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(h) 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;

(i) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the Tax Credit and applicable rate which Seller claims will apply for the Facility and/or the Facility Energy; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3. **Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4. **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), 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 in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. 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 Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3. **Compensation.**

(a) During the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for each Contract Year. If at any point in any Contract Year, the amount of Facility Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(b) If during any Settlement Interval, Seller delivers Facility Energy in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(c) During the Delivery Term, Seller shall receive no compensation from Buyer for Curtailed Energy or Facility Energy that is delivered in violation of a Curtailment Order.

(d) **Tax Credits.** The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

3.4. **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered from the Facility may deviate from the amount of Scheduled Energy, and that 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.

3.5. **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6. **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Section 3.6(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 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7. **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 from the 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 for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price, and, after ninety (90) days, zero dollars (\$0) per MWh (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.7.

3.8. **[Reserved]**.

3.9. **[Reserved]**.

3.10. **[Reserved]**.

3.11. **CEC Certification and Verification**. Subject to Section 3.14, Seller shall take all necessary steps including 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.

3.12. **Eligibility**. Subject to Section 3.14, 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 3.12 means efforts consistent with and subject to Section 3.14.

3.13. **California Renewables Portfolio Standard**. Subject to Section 3.14, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.14. **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 3.14, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.14 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.

3.15. **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1. **Delivery**.

(a) **Energy**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products that may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

#### 4.2. **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer shall be 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 Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Facility 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. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of (i) the available capacity of the Facility, and (ii) the hourly Facility Energy for each day of the following month (items (i)-(ii) collectively referred to as the "**Forecasted Product**") in a form substantially similar to Exhibit F-2 (the "**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 and Buyer's SC (if applicable) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (the "**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. 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 Forecast. 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 (the "**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 / one (1) MWh 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 Facility 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 4.4(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 SC 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 Forced Facility Outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the Real-Time forecast required in Section 4.3(d), and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Facility Energy for such hour set forth in the Monthly Forecast, and (ii) the actual Facility 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of Seller being aware of the occurrence of such Forced Facility Outage.

#### 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 or Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall compensate Seller for Deemed Delivered Energy in accordance with Section 3.3.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonable 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. **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 4.5(a)(i). Seller shall limit maintenance repairs performed pursuant to this Section 4.5(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.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.6. **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has

achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of: (a) any Deemed Delivered Energy plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub 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 Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.7. **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.14, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. 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 posted by WREGIS and delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.7, 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 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

## ARTICLE 5 TAXES

5.1. **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2. **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1. **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2. **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3. **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including by reserving interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for Buyer's sole use, (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 ID, 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. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

## **ARTICLE 7 METERING**

7.1. **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses from the Facility Meter 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. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or the Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2. **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

**ARTICLE 8**  
**INVOICING AND PAYMENT; CREDIT**

8.1. **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10<sup>th</sup>) day of the subsequent month for Product delivered during the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, Adjusted Energy Production, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall provide Seller with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2. **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4. **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5. **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6. **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7. **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8. **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a)

the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9. **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE 9 NOTICES**

9.1. **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

### 10.1. **Definition.**

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); [(ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event]; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2. **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3. **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4. **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance

of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1. **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1.b of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("**Cure Plan**") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2. **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (if such termination occurs prior to or as of the Commercial Operation Date), or (ii) the Termination Payment (if such termination occurs following the Commercial Operation Date), as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3. **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall 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 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 after subtracting for the estimated costs of decommissioning and sale of assets) of 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4. **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5. **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6. **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7. **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8. **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1. **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2. **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED

ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1. **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) is located within an eligible DAC.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2. **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3. **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4. **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof.

## ARTICLE 14 ASSIGNMENT

14.1. **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; *provided*, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including reasonable attorneys’ fees.

14.2. **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O (“**Consent to Collateral Assignment**”).

14.3. **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and 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 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 (“**Buyer Assignment Agreement**”); *provided*, 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 Buyer 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.

14.6. **Sale or Transfer of Site**. Notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign or transfer this Agreement to any Person to whom the owner of the building on which the Facility is located has sold, conveyed, transferred, or assigned its interest in the building on which the Facility is located. In the event of an assignment of this Agreement in connection with the transfer or sale of the Facility, Seller shall provide Buyer Notice at least five (5) Business Days after the date of such transfer, which Notice shall include a written agreement signed by the Person to which Seller has sold or transferred its interests in the Facility following a sale or transfer of the building on which the Facility is located that provides that such Person has assumed all of Seller's obligations and liabilities under this Agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1. **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

15.2. **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3. **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## **ARTICLE 16 INDEMNIFICATION**

### 16.1. **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an "**IP Indemnity Claim**").

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2. **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 17 INSURANCE**

### **17.1. Insurance.**

(a) **General Liability.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount

of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars (\$1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. During the construction of the Facility prior to the Commercial Operation Date, Seller shall maintain, or cause to be maintained, at its sole expense construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through 17.1(f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any

manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1. Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2. Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party

unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or 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, directors, 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.

**ESCA-PLD-CPA-Dominguez 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:** Dominguez

**Site includes all or some of the following APNs:** 7316026025

**City:** Carson

**County:** Los Angeles

**Zip Code:** 90810

**Latitude and Longitude:** Lat: 33.8379719, Long: -118.2342012

**Facility Description:** See Cover Sheet

**Delivery Point:** Existing 12kV Distribution Line (Coordinates: 33.839109, -118.231011)

**PNode:** ARCO1G\_7\_B1

**Transmission Provider:** Southern California Edison

**Additional Information:** See Site diagram on following page

# Facility Description



## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date.**” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1.b. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

#### 2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve

Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.b.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to Notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
  - a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - b. a Force Majeure Event occurs; or
  - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to

clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.
  
6. **Buyer's Right to Draw on Development Security.** If Seller elects to extend the Guaranteed Construction Start Date pursuant to Section 1.b of this Exhibit B and/or if Seller elects to extend the Guaranteed Commercial Operation Date pursuant to Section 2.b of this Exhibit B, but Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, then Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof and Seller shall be required to replenish the Development Security in an amount equal to Buyer's draw.

**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

## 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, 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.

b. Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

c. CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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.

e. 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 (f) 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 from Buyer. 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.

f. 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.

g. 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.

h. 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.

i. 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:

Executive Summary.

Facility description.

- 1) Site plan of the Facility.
- 2) Description of any material planned changes to the Facility or the site.
- 3) Gantt chart schedule showing progress on achieving each of the Milestones.
- 4) Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 5) Forecast of activities scheduled for the current calendar quarter.
- 6) Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 7) List of issues that are reasonably likely to affect Seller's Milestones.
- 8) 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.
- 9) Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 10) 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.
- 11) Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
- 12) Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**ANNUAL EXPECTED AVAILABLE FACILITY ENERGY**

[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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SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2**

**MONTHLY EXPECTED FACILITY ENERGY**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
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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 4.6, 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; provided the market value of Replacement Green Attributes shall be equal to the average of price quotations from no less than three (3) reasonably selected brokers.

D = the Contract Price, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C - D)

**“Adjusted Energy Production”** shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

**“Replacement Energy”** means electrical energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a)  $(A - B)$ , (b)  $(C - D)$  or (c)  $[(A - B) * (C - D)] - (E + F)$ , yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with an Installed Capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_[DATE]\_\_\_

4. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.

5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.

6. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The installed nameplate capacity of the Facility is \_\_ MW AC ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of the Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the \_\_\_\_\_ previously identified \_\_\_\_\_ Site:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**



**The Bank of Nova Scotia, NY Agency**

Trade Service Center  
250 Vesey Street (24<sup>th</sup> Floor)  
New York, NY 10281  
Tel: 212 225 5000  
Fax: 212 225 6464  
SWIFT: NOSCUS33TPS

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
801 S Grand, Suite 400  
Los Angeles, CA 90017

Applicant:

[Name & Address]

Amount: US\$[XXXXXXXX]

By the order of \_\_\_\_\_ (“Applicant”), we, The Bank of Nova Scotia, New York Agency (“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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”). We have been informed by the applicant that this Letter of Credit is issued 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 compliant 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 officer, in the form attached hereto as Exhibit A "Drawing Certificate," 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 (212) 225-6464 or such other number as specified from time-to-time by the Issuer. The Beneficiary may contact us at (212) 225-5418 to confirm receipt of the facsimile transmission. Beneficiary's failure to seek such a telephone confirmation does not affect our obligation to honor such presentation.

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 original documents.

Issuer hereby agrees that all documents 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 250 Vesey Street, 24th Floor, New York, NY 10281, Attn: Trade Services Center. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a compliant presentation. 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 automatically 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 from the present Expiration Date hereof and upon each anniversary for such date, 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 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 Trade Services Center at 250 Vesey Street, 24th Floor, New York, NY 10281, referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Trade Services Center at (212) 225-5418 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

The Bank of Nova Scotia, New York Agency  
250 Vesey Street, 24th Floor  
New York, NY 10281, Attn: Trade Services Center

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Clean Power Alliance of Southern California, a California joint powers authority, 801 S Grand, Suite 400, Los Angeles, CA 90017, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by The Bank of Nova Scotia, New York Agency (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 Officer

Date \_\_\_\_\_

*We have reviewed the language of the above standby letter of credit draft and hereby request The Bank of Nova Scotia, New York Agency to issue a standby letter of credit as drafted.*

*Approved*

*Prologis L.P.*

---

*Signature*

## EXHIBIT L

### FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; *provided*, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned

Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

## 2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
- (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
  - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; *provided*, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections  [Severability],  [Counterparts],  [Amendments] and  [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**5. Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....  
.....  
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>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**  
**RESERVED**

Exhibit M - 1

**EXHIBIT N**

**NOTICES**

<p><b>ESCA-PLD-CPA-Dominguez 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>                  Street: 1800 Wazee St., Suite 500                  City: Denver, CO 80202                  Attn: Global Energy                  Phone: (800) 566-2706                  Email: globalenergyops@prologis.com</p>	<p><b>All Notices:</b>                  Street: 801 S Grand, Suite 400                  City: Los Angeles, CA 90017                  Attn: Executive Director                  Phone: (213) 269-5870                  E-mail: tbardacke@cleanpoweralliance.org</p>
<p><b>Reference Numbers:</b>                  Duns: TBD                  Federal Tax ID Number: TBD</p>	<p><b>Reference Numbers:</b>                  Duns:                  Federal Tax ID Number:</p>
<p><b>Invoices:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Invoices:</b>                  Attn: CPA Settlements                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Scheduling: TBD</b>                  Attn: Day Ahead Scheduling                  Phone: (817) 303-1104                  Email: TenaskaComm@tnsk.com</p>
<p><b>Confirmations: N/A</b>                  Attn: N/A                  Phone: N/A                  Email: N/A</p>	<p><b>Confirmations:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>                  Attn: Global Energy Asset Management                  Phone:                  E-mail: globalenergyops@prologis.com</p>	<p><b>Payments:</b>                  Attn: Vice President, Power Supply                  Phone: (213) 269-5870                  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>                  BNK: Bank of America                  ABA: 111000012                  ACCT: XXXXXX8368</p>	<p><b>Wire Transfer:</b>                  BNK: River City Bank                  ABA: 121133416                  ACCT: XXXXXX8042</p>

## EXHIBIT O

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent's instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from CPA to cure such PPA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced

foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CPA that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience necessary to satisfy the definition of Permitted Transferee in the PPA (a "Permitted Transferee"), *provided, further*, that it is acknowledged and agreed that [\_\_\_\_\_] [*Insert name of initial Collateral Agent*] is a Permitted Transferee. For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such

purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, for so long as it is or was entitled to under the PPA or Replacement PPA.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice given by Collateral Agent to Project Company pursuant to the Financing Documents relating to an event of default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions.

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. 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.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p>
<p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>	<p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p><b>By:</b> _____ <i>[Name]</i> <i>[Title]</i>  Date: _____</p>	

## **SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

**EXHIBIT P**  
**MATERIAL PERMITS**

<i>No.</i>	<i>Permits</i>
1	City of Carson Plan Check
2	City of Carson Fire Plan Check
3	LA County Building Permit
4	LA County Electrical Permit

**EXHIBIT Q**

**RESERVED**

Exhibit Q – 1

**EXHIBIT R**

**METERING DIAGRAM**

[To be inserted by Seller upon date of Financial Close reflected in the Cover Sheet]

## EXHIBIT S

### Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

#### 1. **Freely Chosen Employment**

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

#### 2. **Young Workers**

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student

workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

**3. Working Hours**

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

**4. Wages and Benefits**

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

**5. Humane Treatment**

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

**6. Non-Discrimination/Non-Harassment**

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

**7. Freedom of Association**

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

**8. Restricted Jurisdictions**

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

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## Staff Report – Agenda Item 7

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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 Renewable Power Purchase Agreements  
**Date:** October 6, 2022

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### **RECOMMENDATION**

Approve six (6) amendments to Renewable Power Purchase Agreements (PPAs) with various counterparties and authorize the Chief Executive Officer to execute the amendments:

- a. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Daggett Solar Power 3 LLC (Daggett 3)
- b. Amended and Restated Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and 20SD 8me LLC (Rexford)
- c. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Daggett Solar Power 2 LLC (Daggett 2)
- d. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Arica Solar LLC (Arica)
- e. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Chalan CA Solar Storage, LLC (Chalan)
- f. First Amendment to the Renewable Power Purchase Agreement between Clean Power Alliance of Southern California and Desert Quartzite, LLC (Desert Quartzite)

**BACKGROUND**

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, the Uyghur Force Labor Prevention Action (UFLPA), and the 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 battery 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.

In July 2022, the Board of Directors approved amendments to three renewable PPAs that experienced delays and are unable to meet their originally contracted Guaranteed Commercial Operation Dates (CODs). To reduce the risk that these contracts would be terminated, CPA negotiated these amendments to the PPAs to allow the projects to come online under feasible timelines and at new prices. Contract termination would raise CPA's procurement costs, invite lengthy and costly litigation, and risk CPA being assessed compliance penalties related to reliability mandates.

Beyond those three contracts, all of the remaining utility-scale projects in CPA's portfolio that are not yet online,<sup>1</sup> (seven projects consisting of approximately 1,006 MW of solar

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<sup>1</sup> CPA has one additional small-scale solar project that is not yet built but whose project does not contribute to reliability compliance and whose price is subsidized by California Public Utilities Commission funds. Modifications to this project, if any, would need to go through a separate process.

and 578 MW of storage) indicated they are financially distressed due to these unprecedented challenges, and price increases and schedule modifications would be required in order to deliver on the projects.

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 prices and Commercial Operation Dates (CODs), require approval by the Board.

### **PPA Price Refresh Process**

On August 25, 2022, CPA launched the PPA Price Refresh Process to allow projects to offer refreshed prices and modified online dates under common guidelines and procedures so that CPA may make an informed decision on which contracts to consider amending. Price refresh offers were received on September 8, 2022.

Guidelines for participants included the following:

- PPA Price Refresh Participants were required to submit an offer that adjusts only their price and/or COD but could also submit additional offers for different terms (from 10 to 20 years), sizes, and configurations that result in the best value to CPA.
- Participants were required to submit statements explaining (i) why a price refresh is required to deliver on their contract (ii) project schedule, and (iii) project viability.
- Participants were required to waive their rights to litigation or damages resulting from their participation in this process or non-selection, e.g., bid preparation costs, lost opportunity.
- Participants were asked to offer additional reductions to contract prices that become effective if the projects received new Inflation Reduction Act tax credit bonuses.
- Existing force majeure claims would be settled and released as part of the amendment.

On September 19, 2022, a review team consisting of three Board members from the Energy Committee as well as senior staff consisting of the Chief Executive Officer, the

Chief Operating Officer, the Vice President of Power Supply, and the Director of Structured Contracts met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects with which to enter exclusive amendment negotiations.

Any participants not selected in the PPA Price Refresh process are left with their existing contract and obligations with CPA at the originally executed price.

## **OVERVIEW OF PROJECTS**

A summary of the projects for which staff is seeking Board authorization to amend contracts at today's Board meeting is provided below:

Project	Counterparty	Original				Proposed			
		RPS MW	Storage MW	COD	Term (Years)	RPS MW	Storage MW	COD	Term (Years)
Daggett 3	Clearway	123	61.5	3/31/2023	15	123	61.5	12/1/2023	15
Rexford	Avantus*	300	180	10/1/2023	15	300	240	12/31/2024	15
Daggett 2	Clearway	65	52	10/1/2023	15	65	52	12/19/2023	15
Arica	Clearway	93.5	71	12/1/2023	15	93.5	71	6/1/2024	15
Chalan	Origis Energy	64.9	25	12/31/2023	15	64.9	65**	Phase I: 12/31/2024 Phase II: 6/1/2025	15
Desert Quartzite	EDF Renewables	300	150	3/1/2024	15	300	150	3/1/2025	20

\*Formerly 8minute Energy

\*\*Chalan storage capacity may increase by up to 40 MW to 65 MW. 25 MW of storage capacity will come online on 12/31/2024 and as much as an additional 40 MW will come online in a second phase II by 6/1/2025.

Each of these projects is described in further detail in the attached Exhibit 1.

## **EVALUATION CRITERIA**

The Review Team evaluated proposed amendments using three criteria:

- Value based on Net-Present-Value (NPV) per MW
- Contribution to Mid-Term Reliability (MTR) compliance: Per the CPUC Decision Requiring Procurement to Address Mid-Term Reliability 2023-2026 (MTR Decision), CPA must procure a total of 679 MW of new reliable capacity between 2023-2026. These projects contribute to MTR compliance depending on their size and online dates.

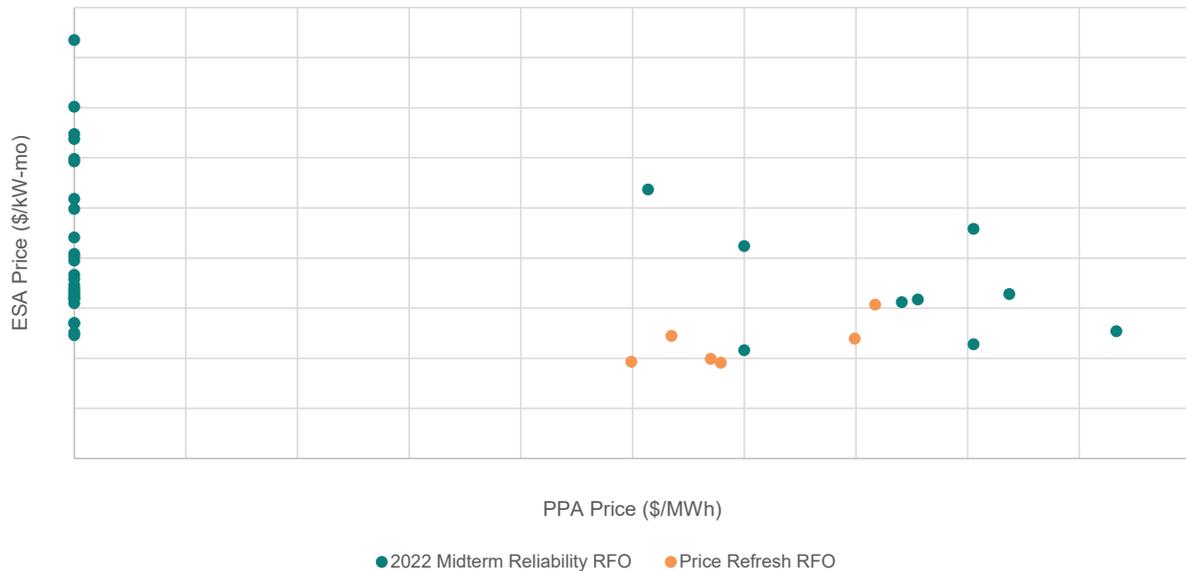
- Project schedule and viability

**Valuation Results**

CPA valued all offers from the PPA Refresh process and concluded that all selected refreshed offers are NPV positive, i.e., expected revenues from the projects exceed expected costs.

In addition to the standalone value of each project, CPA also compared pricing from the PPA Refresh process against preliminary pricing that CPA received from the 2022 Mid-Term Reliability Request for Offers (RFO) offers, which provides a price benchmark of the cost of purchasing capacity from newly contracted projects to replace capacity lost in the event price refresh offers are not selected. Assuming the most conservative pricing (no extra tax credit benefits), offers in the Price Refresh Process were favorable compared to pricing from the recent 2022 Mid-Term Reliability RFO:

Scatter of 2022 MTR RFO vs 2022 Price Refresh RFO Offer Prices



## **RATIONALE**

Allowing selected projects to reprice achieves three important objectives for CPA: meeting compliance targets, minimizing procurement costs, and executing on CPA's mission.

### **Compliance**

The selected projects are critical for CPA to meet its compliance targets under the MTR Decision. The tables below show CPA's MTR compliance position with and without the proposed amended projects:

#### *Without Any Offered Projects:*

	8/1/2023	6/1/2024	6/1/2025
CPA Procurement Need	118.0	472.0	561.0
Executed Contracts	118.0	177.2	177.2
<b>Compliance Long/ (Short)</b>	<b>0.0</b>	<b>(294.8)</b>	<b>(383.8)</b>

#### *With Selected Projects:*

	8/1/2023	6/1/2024	6/1/2025
CPA Procurement Need	118.0	472.0	561.0
Executed Contracts	118.0	368.0	730.1
<b>Compliance Long/ (Short)</b>	<b>0.0</b>	<b>(104.0)</b>	<b>169.1</b>

### **Procurement Costs**

Allowing executed contracts to reprice avoids higher costs to meet renewable energy demand and Resource Adequacy needs, because these long-term contract costs are still lower cost than meeting CPA's demand with more expensive short-term renewable energy and Resource Adequacy products. In addition, the refreshed prices are competitive with what CPA could secure as long-term replacement product.

The repricing also reduces CPA's risk of compliance penalties and costly litigation with projects that would otherwise seek to terminate their agreements.

**Consistent with Mission**

Allowing executed contracts to reprice demonstrates CPA's commitment to the mission of bringing new clean energy resources to the capacity-constrained grid despite challenging market conditions. It also supports the well-earned perception of CPA as an entity that meets its compliance and other obligations.

**KEY PPA AMENDMENT TERMS**

The attached amendments reflect the following material terms:

- New project milestone schedule, including new commercial operation date
- New \$/MWh renewable rate (for solar energy) and new \$/kW month storage rate
- Price reductions for CPA related to incremental tax credit benefits: Under the Inflation Reduction Act, projects may now qualify for additional tax credit bonuses beyond the base 30% Investment Tax Credit (ITC) or Production Tax Credit (PTC)<sup>2</sup> rates. If sellers qualify for these bonuses, the savings will be passed along to CPA in the form of reduced PPA rates.
- No grid charging restrictions: Under the Inflation Reduction Act, standalone storage qualifies for the ITC, which means that storage is no longer limited to being charged by only the solar facility during the tax benefit recapture period. Therefore, grid charging restrictions in the original PPA language have been removed. This allows for more operating flexibility and revenue-generating opportunities for CPA.
- Pass-through of property tax costs to CPA associated with grid charging: For solar plus storage projects in California, the storage portion of the project may lose its property tax exemption if grid energy is used to charge the battery. Sellers including pricing in the PPA to reflect increased property tax costs resulting from CPA electing to grid-charge the storage during the contract term.

Any unique project-specific terms are described in Exhibit 1.

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<sup>2</sup> The Inflation Reduction Act allows solar to qualify for the PTC.

**ATTACHMENTS**

1. PPA Amendments Presentation
2. First Amendment to Renewable Power Purchase Agreement with Daggett Solar Power 3 LLC<sup>3</sup>
3. Amended and Restated Renewable Power Purchase Agreement with 20SD 8me LLC<sup>3</sup> (Revised with redlines)
4. First Amendment to Renewable Power Purchase Agreement with Daggett Solar Power 2 LLC<sup>3</sup>
5. First Amendment to Renewable Power Purchase Agreement with Arica Solar LLC<sup>3</sup>
6. First Amendment to Renewable Power Purchase Agreement with Chalan CA Solar Storage, LLC<sup>3</sup>
7. First Amendment to Renewable Power Purchase Agreement with Desert Quartzite, LLC<sup>3</sup>

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<sup>3</sup> Consistent with industry practice, portions of the agreements have been redacted to protect market sensitive information.

**EXHIBIT 1: PROJECT DESCRIPTIONS****Daggett 3 Solar Plus Storage**

On October 2, 2020, CPA executed a PPA with the Daggett 3 project for a 123 MW solar and 61.5 MW/246 MWh lithium-ion battery project located in San Bernardino County with a commercial operation date of March 31, 2023. The developer of the project is Clearway Energy Group, LLC.

In the PPA Price Refresh process, Daggett 3 requested an increase to both the renewable and storage price and an extension of the commercial online date to December 1, 2023, in order to deliver on the project. The Daggett 3 project is currently under construction and has a high chance of coming online by the newly requested commercial online date. All major discretionary permits for the project have been secured and all major equipment, including photovoltaic panels and battery modules, has been secured.

The Daggett 3 project accounts for 63.9 MW of compliance under Mid-term Reliability Tranche 2, which commences on June 1, 2024.

**Rexford Solar Plus Storage:**

On September 4, 2020, CPA executed a PPA with the Rexford project for a 300 MW solar and 180 MW/540 MWh lithium-ion battery project located in Tulare, California with a commercial operation date of October 1, 2023. The developer of the project is Avantus, formerly known as 8minute Solar Energy.

In the PPA Price Refresh process, Rexford requested an increase to both the renewable and storage price and an extension of the commercial online date to December 31, 2024, in order to deliver on the project. Also through the process, the duration of the Rexford battery was increased from a 3-hour discharge to 4-hour discharge, and the battery capacity was upsized from 180 MW to 240 MW, which assists both grid reliability and meeting CPA's compliance obligations. This increase from 3- to 4-hours will have an impact on multiple provisions of the original PPA and therefore, requires that the original agreement be amended and restated (instead of a standalone amendment). The Rexford

project has a high chance of coming online by the newly requested commercial operation date. All major discretionary permits for the project have been secured and major equipment, including photovoltaic panels and battery modules, for the project has been partially secured.

The Rexford PPA amendment also includes an option for CPA to negotiate a further price reduction on the renewable rate related to purchasing additional solar photovoltaic energy from an upsizing of the solar facility. CPA is still evaluating this option, and the price reduction would need to be effectuated by an additional amendment to be negotiated by both parties within 30 days of the amendment execution.

The Rexford project accounts for 198.2 MW of compliance under Midterm Reliability Tranche 3, which commences on June 1, 2025.

### **Daggett 2 Solar Plus Storage**

On June 4, 2021, CPA executed a PPA with the Daggett 2 project for a 65 MW solar and 52 MW/208 MWh lithium-ion battery project located in San Bernardino County with a commercial operation date of October 1, 2023. The current commercial operation date for Daggett 2 is December 19, 2023. The developer of the project is Clearway Energy Group, LLC.

In the PPA Price Refresh process, Daggett 2 requested an increase to both the renewable and storage price in order to deliver on the project. The Daggett 2 project has a high chance of coming online by the commercial online date. All major discretionary permits for the project have been secured and all major equipment, including photovoltaic panels and battery modules, for the project has been secured.

The Daggett 2 project accounts for 51.5 MW of compliance credit under Midterm Reliability Tranche 2 which commences on June 1, 2024.

**Arica Solar Plus Storage**

On June 4, 2021, CPA executed a PPA with the Arica project for a 93.5 MW solar and 71 MW/284 MWh lithium-ion battery project located in Riverside County with a commercial operation date of December 1, 2023. The developer of the project is Clearway Energy Group, LLC.

In the PPA Price Refresh process, Arica requested an increase to both the renewable and storage price and an extension of the commercial online date to June 1, 2024, in order to deliver on the project. The Arica project has a high chance of coming online by the newly requested commercial online date. All major discretionary permits for the project have been secured and all major equipment, including photovoltaic panels and battery modules, has been secured.

The Arica project accounts for 64.4 MW of compliance under Midterm Reliability Tranche 2, commencing on June 1, 2024.

**Chalan Solar Plus Storage**

On August 27, 2020, CPA executed a PPA with the Chalan project for a 65 MW solar and 25 MW/100 MWh lithium-ion battery project located in Kern County with a commercial operation date of December 31, 2023. The developer of the project is Origis Energy.

In the PPA Price Refresh process, Chalan requested an increase to both the renewable and storage price and an extension of the commercial online date to December 31, 2024. The Chalan project has a medium chance of coming online by the newly requested commercial online date. Chalan is facing delays to CAISO interconnection and issuance of the project's Conditional Use Permit by the Kern County Planning Commission. All major equipment, including photovoltaic panels and battery modules, for the project has been secured.

Chalan is currently in the process of requesting CAISO approval to increase the battery size such that it will be able to offer additional compliance MWs for MTR. The PPA

amendment reflects an option for Origis to bring online as much as 40 MW of additional battery capacity by June 1, 2025, contingent on CAISO approval.

The Chalan project accounts for up to 52.6 MW of compliance credit under Midterm Reliability Tranche 3, commencing on June 1, 2025.

### **Desert Quartzite Solar Plus Storage**

On September 3, 2021, CPA executed a PPA with the Desert Quartzite project for a 300 MW solar and 150 MW/600 MWh lithium-ion battery project located in Blythe, California with a commercial operation date of March 1, 2024. The developer of the project is EDF Renewables.

In the PPA Price Refresh process, Desert Quartzite requested an increase to both the renewable and storage price and an extension of the commercial online date to March 1, 2025, in order to deliver on the project. The Desert Quartzite project has a medium chance of coming online by the newly requested commercial online date. All major discretionary permits for the project have been secured however major equipment, including photovoltaic panels and battery modules, has not yet been secured but the developer has indicated that there is line of sight to secure that equipment.

The Desert Quartzite PPA amendment extends the PPA term from 15 years to 20 years, which allowed the seller to offer a lower price to CPA.

The Desert Quartzite project accounts for 111.3 MW of compliance credit under Midterm Reliability Tranche 3, commencing on June 1, 2025.

# PPA Amendments

## Item 7

October 6, 2022



# Executive Summary

- ⚡ Staff previously provided briefings to the Board and Committees on the unusual industry-wide challenges that have been straining energy developers' ability to deliver projects on-time and at contracted cost, including disruptions to the supply chain, U.S. trade actions, rising commodity prices, COVID-19, and war in Ukraine
- ⚡ Of the CPA portfolio of projects not yet online, seven projects consisting of approximately 1,006 MW of solar and 578 MW of storage have indicated they are financially distressed due to these challenges, and price increases would be required in order to deliver on the projects
  - These projects contribute to CPA's Mid-Term Reliability (MTR) compliance obligations and overall grid stability
  - CPA would be required to procure replacement capacity through a new contracting process should the projects terminate
- ⚡ Staff ran a process to consider offers to refresh prices and modify online dates so that CPA may make an informed decision on which contracts to consider amending (“PPA Price Refresh Process”)
  - The process was designed to elicit competitive offers amongst participants and ensure CPA shares in any incremental revenues counterparties may gain in the future due to favorable tax treatment resulting from the Inflation Reduction Act
- ⚡ A PPA Price Refresh Process Review Team, including 3 Board/Energy Committee members, reviewed the confidential proprietary offers and selected a subset of the offers that provide CPA with high value and high viability contracts that also minimize the risk of noncompliance with MTR
- ⚡ **Action Requested:** Approve the PPA amendments as recommended by the Review Team, and authorize the CEO to execute the amendments

# Agenda

- ⚡ Background
- ⚡ Procurement Compliance
- ⚡ PPA Price Refresh Process
- ⚡ Action Requested

# Background



# Challenges Facing Clean Energy Development

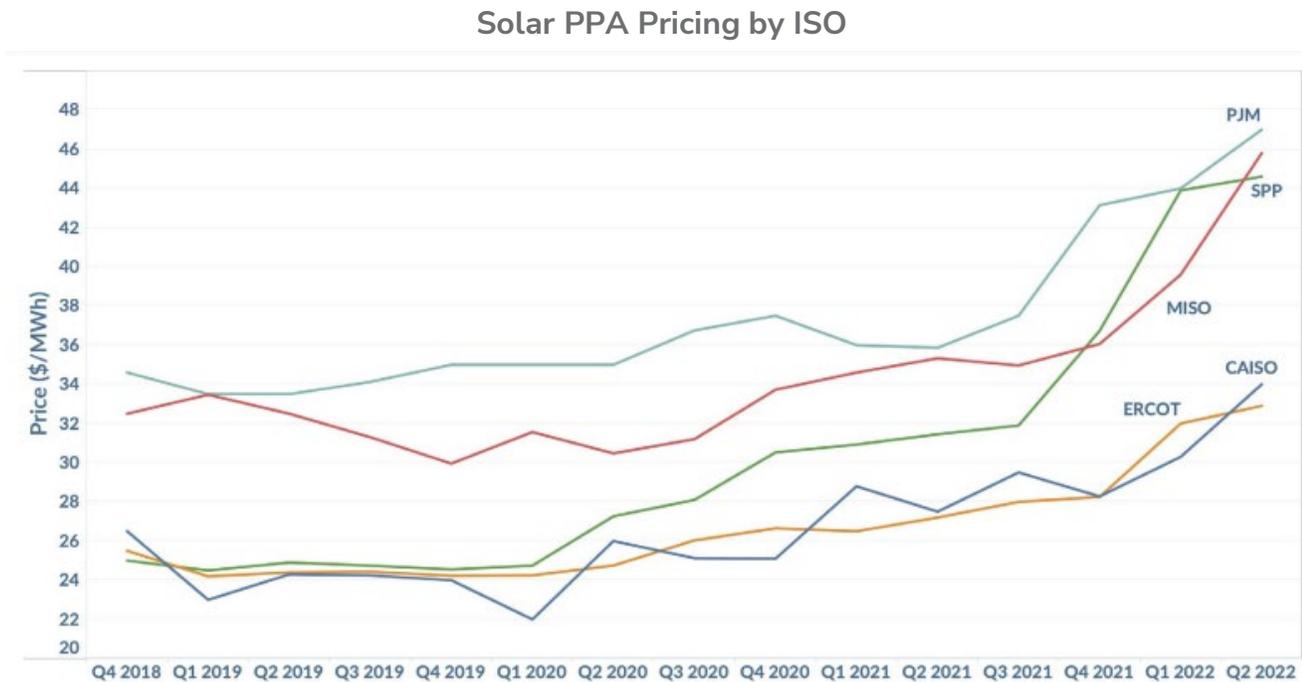
- ⚡ Renewable energy developers are facing several unprecedented challenges in delivering on new build projects, particularly for projects with 2022-2024 online dates:
  - Ongoing pandemic-related supply chain impacts, including inflationary pressure on raw materials and manufacturing equipment as well schedule delays due to factory closures and transit disruptions
  - U.S. trade actions, including the Uyghur Forced Labor Prevention Action (UFLPA) and the Department of Commerce Auxin Investigation, that stopped production and delivery of solar panels from Asia for several months
  - Rising commodity prices on key solar panel and battery materials, further exacerbated by the Ukraine War

# Challenges Facing Clean Energy Development (Cont.)

- ⚡ Any one of these factors could impact project risk; compounded, they pose uncommon challenges for even highly experienced and well capitalized developers
- ⚡ New project offers received in CPA's latest 2022 Mid-Term Reliability RFO, which closed in September 2022, reflect this elevated pricing
- ⚡ While the Inflation Reduction Act should have a positive impact on clean energy resource pricing, much of the tax credit provisions are still unknown, causing significant developer uncertainty for near-term projects

# Solar Pricing

- ⚡ The significant disruption in the solar panel supply chain due to COVID-19 and tariff actions has created upward pressure on solar pricing
- ⚡ Based on industry benchmarks, PPA prices for utility scale solar resources in CAISO have increased from ~\$26.50/MWh in 2018 to ~\$34.00/MWh in 2022



# Storage Pricing

- ⚡ Lithium costs have increased dramatically as a result of strong demand for utility scale batteries and rising demand in the automotive industry
- ⚡ In March 2022, nickel prices surged due to sanctions against Russia, a major supplier of the metal, as a result of its invasion of Ukraine. Nickel is a key component in lithium-ion batteries

## Lithium carbonate prices are through the roof

As EV manufacturing ramps up, the supply of lithium—a key material in batteries—can't keep up with demand. Prices could remain volatile through 2023.

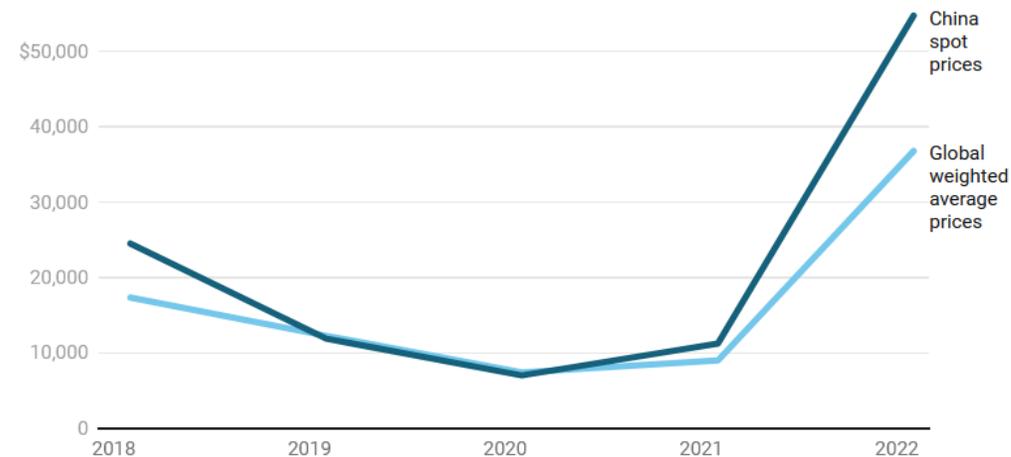


Chart: Emerging Tech Brew • Source: Benchmark Mineral Intelligence • [Get the data](#) • Created with [Datawrapper](#)

# Procurement Compliance



# Mid-Term Reliability Decision

- ⚡ In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) (CPUC Decision), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026:

Resource Type	Online By			
	2023	2024	2025	2026*
Reliable Capacity (General)	118	354	89	
Baseload Renewables				59
Long-Duration Storage				59

\*Because baseload renewables and long-duration storage technologies are considered long-lead time resources, the CPUC allows LSEs to request extensions to bring these resources online by June 1, 2028



# Mid-Term Reliability (MTR) Compliance

- ⚡ MTR compliance position with and without the proposed amended projects:

## *Without Any Offered Projects:*

	8/1/2023	6/1/2024	6/1/2025
CPA Procurement Need	118.0	472.0	561.0
Executed Contracts	118.0	177.2	177.2
<b>Compliance Long / (Short)</b>	<b>0.0</b>	<b>(294.8)</b>	<b>(383.8)</b>

## *With Selected Projects:*

	8/1/2023	6/1/2024	6/1/2025
CPA Procurement Need	118.0	472.0	561.0
Executed Contracts	118.0	368.0	730.1
<b>Compliance Long / (Short)</b>	<b>0.0</b>	<b>(104.0)</b>	<b>169.1</b>

- ⚡ For 2023, CPA will meet its compliance with the already contracted/amended projects\*
- ⚡ For 2024, CPA will be short even after selecting projects from the Price Refresh Process
- ⚡ There are some 2024 on-line date projects available in the 2022 MTR RFO; they are all more expensive than the proposed amendments from 2024 Price Refresh Process projects

\*In July 2022, the Board approved three amendments to long-term PPAs that provided schedule relief for delayed projects at the original contract cost. These projects are contributing to 2023 and 2024 compliance mandates.

# PPA Price Refresh Process



# PPA Price Refresh Guidelines

- ⚡ PPA Price Refresh Participants were required to submit an offer that adjusts only their price and/or Commercial Online Date (COD), and were given an opportunity to submit additional offers for different terms (from 10 to 20 years), sizes, and configurations that result in the best value to CPA
- ⚡ Participants were required to submit statements explaining (i) why a price refresh is required to deliver on their contract (ii) project schedule, and (iii) project viability
- ⚡ Participants were required to waive their rights to litigation or damages resulting from their participation in this process or non-selection, e.g., bid preparation costs, lost opportunity
- ⚡ Participants were also asked to offer additional reductions to contract prices that become effective if the projects received new Inflation Reduction Act tax credit bonuses
- ⚡ Existing force majeure claims would be settled and released as part of the amendment
- ⚡ Participants that are not selected will be left with their existing contract and obligations

# Selection Considerations

- ⚡ The PPA Price Refresh Review Team evaluated proposed amendments on three key criteria:
  - Value (net present value/MW)
  - Contribution to MTR compliance
  - Project schedule and viability
- ⚡ Simultaneously, CPA received preliminary pricing for the 2022 MTR RFO offers, which provides a price benchmark of the cost of purchasing capacity from newly contracted projects to replace capacity lost in the event price refresh offers are not selected
  - This replacement capacity would be necessary for both compliance needs and to serve customers
- ⚡ The Review Team, including 3 Board/Energy Committee members, reviewed the confidential proprietary offers and selected a subset of the offers that provide CPA with high value and high viability contracts that also minimize the risk of noncompliance with MTR



# Action Requested



# Action Requested

⚡ The following solar + storage contracts are proposed to be amended, reflecting increased pricing compared to the original executed contract and the following changes:

Project	Counterparty	Original				Proposed			
		RPS MW	Storage MW	COD	Term (Years)	RPS MW	Storage MW	COD	Term (Years)
Daggett 3	Clearway	123	61.5	3/31/2023	15	123	61.5	12/1/2023	15
Rexford	Avantus*	300	180	10/1/2023	15	300	240	12/31/2024	15
Daggett 2	Clearway	65	52	10/1/2023	15	65	52	12/19/2023	15
Arica	Clearway	93.5	71	12/1/2023	15	93.5	71	6/1/2024	15
Chalan	Origis Energy	64.9	25	12/31/2023	15	64.9	65**	Phase I: 12/31/2024 Phase II: 6/1/2025	15
Desert Quartzite	EDF Renewables	300	150	3/1/2024	15	300	150	3/1/2025	20

\*Formerly 8minute Energy

\*\*Chalan storage capacity may increase by up to 40 MW to 65 MW. 25 MW of storage capacity will come online on 12/31/2024 and as much as an additional 40 MW will come online in a second phase II by 6/1/2025.

# Rationale

- ⚡ Allowing selected executed contracts to reprice:
  - Avoids higher costs to meet renewable energy demand and Resource Adequacy needs
    - In the short term, there remains a spread between short and long-term contract costs even at these refreshed prices
    - In the long term, the refreshed prices are competitive with what CPA could secure as long-term replacement product
  - Reduces CPA's risk of compliance penalties and costly litigation
  - Demonstrates CPA's commitment to the mission of bringing new clean energy resources to the capacity-constrained grid despite challenging market conditions
- ⚡ **Action Requested:** Approve the PPA amendments and authorize the Chief Executive Officer to execute the amendments

## AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [\_\_\_\_], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Daggett Solar Power 3 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 Agreement, dated as of October 2, 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 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 “12/1/2023”.
  - (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
Expected Construction Start Date	Complete

Milestone	Expected Date for Completion
Initial Synchronization	12/26/2022
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	4/15/2023
Expected CAISO Commercial Operation Date	10/1/2023
Expected Commercial Operation Date	12/1/2023

- (c) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	\$ [REDACTED] /MWh (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	\$ [REDACTED] /kW-mo. (flat) with no escalation

- (d) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

**Seller’s Assumed Tax Credits:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at an “energy percentage” of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

- (e) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

**“Charging Energy”** means all Energy 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.

**“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, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

**“Property Tax Exemption”** means the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$█/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller’s Assumed Tax Credits, or (b) the ITC for the Generating Facility and that that the ITC “energy percentage” claimed for the Generating Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by █/MWh for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%).

**“Seller’s Assumed Tax Credits”** has the meaning set forth on the Cover Sheet.

**“Storage Rate”** has the meaning set forth on the Cover Sheet; *provided*, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(j) states that the ITC “energy percentage” claimed for the Storage Facility is higher than the ITC “energy percentage” set forth as Seller’s Assumed Tax Credits, the Storage Rate shall be reduced by \$█ per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), and (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$█ per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$█ per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the Storage Rate shall increase from \$█/kW-month by an amount equal by \$█ per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$█/kW-month by an amount equal to \$█ per kW-month for each one (1) percent increase greater than 25% plus the product of \$█ per kW-month and twenty-five (25).

(f) The following Definitions are added to Section 1.1 as follows:

**“CAISO Commercial Operation”** has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

- (g) A new Section 2.2(j) is added as follows:
- (h) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC "energy percentage" rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer's certificate
- (i) 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.

- (j) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

- (k) Section 4.4(b) is replaced in the entirety with the following:

(k) 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 in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

- (l) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging

Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period 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.

- (m) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV 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.

- (n) 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.

- (o) 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(h) 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(h) means efforts consistent with and subject to Section 3.12.

- (p) In Section 10.4(a), the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)”.
- (q) 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)”.
- (r) In Section 3 of Exhibit H, the phrase “and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility” is added to the end thereof.
- (s) In Section II of Exhibit Q, Item 4 “Grid Charging” is replaced in its entirety by the phrase “[Intentionally Omitted]”.

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:”**

**DAGGETT SOLAR POWER 3 LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

## ATTACHMENT 1

### Development Cure Period Claims

Claims for [REDACTED] relating to the events described below:

- Delays resulting from module delivery delays impacted by (i) U.S. Customs and Border Protection's enforcement of [REDACTED], (ii) passage of the Uyghur Forced Labor Prevention Act, and (iii) [REDACTED] the COVID-19 pandemic, as described in notices sent to Buyer on February 4, 2022, March 18, 2022, and May 20, 2022, and as further detailed in (i) that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED], and (ii) that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED], each dated May 25, 2022 (as modified by the revised Attachment B sent to on Buyer June 1, 2022).
- Delays resulting from module delivery delays impacted by the [REDACTED] investigations by the U.S. Department of Commerce into whether solar cells and modules [REDACTED] are circumventing existing antidumping and countervailing tariffs on solar cells and modules from China, as described in the notices sent to Buyer on April 19, 2022 and May 20, 2022, and as further detailed in that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED] Delay dated May 25, 2022 (as modified by the revised Attachment B sent to Buyer on June 1, 2022).
- Delays arising out of the delay communicated to Seller by SCE related to delays in delivery of SCE's station service voltage transformer, as described in the notices sent to Buyer on April 19, 2022, May 11, 2022 and May 20, 2022, and as further detailed in that certain Force Majeure Claim Assessment Form (Claim) – SCE In-Service Delay dated May 25, 2022 (as modified by the revised Attachment B sent to Buyer on June 1, 2022).

REVISED (redline)

**AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

**Seller:** 20SD 8me LLC, a Delaware limited liability company

**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility:** A 300 MW solar photovoltaic Generating Facility combined with a 960 MWh (240MW x 4 hours) battery energy Storage Facility, as more fully described herein

**Guaranteed Construction Start Date:** June 30, 2024

**Guaranteed Commercial Operation Date:** December 31, 2024

**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	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 1, 2024
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	December 31, 2024
Expected Commercial Operation Date	December 31, 2024

**Delivery Term:** Fifteen (15) Contract Years

**Delivery Term Expected Energy:**

Contract Year	Expected Energy (MWh)
1	853,044
2	██████████
3	██████████
4	██████████
5	██████████
6	██████████
7	██████████
8	██████████
9	██████████
10	██████████
11	██████████
12	██████████
13	██████████
14	██████████
15	██████████

**Guaranteed Capacity:** 540 MW of total Facility capacity

**Guaranteed Storage Capacity:** 240 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 300 MW of Installed PV Capacity

**Guaranteed Efficiency Rate:**

Contract Year	Guaranteed Efficiency Rate
---------------	----------------------------

4134-0725-9711 2

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

4134-0725-9711 2

**Assumed Tax Credit Rates:** As of the Amendment Effective Date, the Parties have assumed for purposes of this Agreement that Seller would qualify for and utilize: (i) an ITC at thirty percent (30%) for the Storage Facility; and (ii) a PTC at \$0.027/kWh for the Generating Facility for the calendar year in which the Generating Facility is “placed in service” for federal income tax purposes (together, the “**Assumed Tax Credit Rates**”).

**Product**

- PV Energy
- Discharging Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services
- Capacity Attributes (select options below as applicable)
  - Energy Only Status
  - Full Capacity Deliverability Status
    - a) RA Guarantee Date: Commercial Operation Date

**Scheduling Coordinator:** To be designated by 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: Not applicable on Effective Date

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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 October \_\_\_\_, 2022 (the “**Amendment 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 Renewable Power Purchase Agreement, dated as of September 4, 2020 (the “**Effective Date**”);

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of such Renewable Power Purchase Agreement as provided herein;

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.

“**Adjustment Date**” means, with respect to the Generating Facility, either (a) if Seller elects to use ITC for the Generating Facility, the date on which the Generating Facility is “placed in service” for federal income tax purposes, or (b) if Seller elects to use PTC for the Generating Facility, the later of (i) the date on which the Generating Facility is “placed in service” for “federal income tax purposes” and (ii) 90 days prior to GCOD.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with

respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Amendment Effective Date**” has the meaning set forth in the Preamble.

“**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 applicable Law, the Interconnection Agreement, 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 Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, or DNV GL 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).

“**ASHRAE 2% Average High Temperature**” means the location specific temperature rating for the Site that is based on historical climate data and represents the high temperature rating for which the actual temperature at the Site is only expected to exceed such rating for an anticipated fourteen (14) hours in a given year, as published by the professional organization, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

“**Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Assumed Tax Credit Rates**” has the meaning set forth on the Cover Sheet.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 4.5(j).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Auxiliary Use**” means the Energy that is used (including Energy used during the charging or discharging of the Storage Facility) within the Storage Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the operation of the Storage Facility.

“**Availability Notice**” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

“**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 and a half (5.5) hours of the charging phase of the applicable Storage Capacity Test.

“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply

Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility, and/or Curtailment Order.

“**Buyer Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer breach or default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; *provided*, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“**Buyer Default**” means an Event of Default of Buyer.

“**Buyer Dispatched Test**” has the meaning in Section 4.9(c).

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 18.2.

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**CAISO**” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“**CAISO Certification**” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff 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 Facility Energy or PV Energy (as applicable) delivered to the Delivery Point or Generating Facility Meter (as applicable) qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than

fifty percent (50%) of the outstanding equity interests in Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly either owns more than fifty percent (50%) of the outstanding equity interests in each, or controls 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 Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility (including, for the avoidance of doubt, Auxiliary Uses during such charging).

**"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, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. 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"** 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, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an

Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**"Cycles"** means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

**"Daily Delay Damages"** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

**"Damage Payment"** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.3(c).

**"Day-Ahead Market"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

**"Deemed Delivered Energy"** means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility,

or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

**"Deemed Delivered Energy Rate"** has the meaning set forth in Section 4.4(b).

**"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. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

**"Discharging Notice"** means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to 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 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 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.

**"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 recitals.

**“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) 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 of converting Energy In into Energy Out, as calculated by dividing Energy Out in the applicable month of the Delivery Term by Energy In in the same month of the Delivery Term, expressed as a percentage, and if the SOC at the beginning of the applicable month is not equal to the SOC at the end of the applicable month, the Parties shall mutually agree on a reasonable adjustment to such calculation.

**“Electrical Losses”** means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy. 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”** means all Energy delivered into the Storage Facility (not including any Idle Auxiliary Use or other “idle losses” -- i.e., energy metered into the Storage Facility when not charging or discharging) measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses and after subtracting any Idle Auxiliary Use.

**“Energy Management System”** or **“EMS”** means the Facility’s energy management system.

**“Energy Out”** means all Energy output from the Storage Facility as measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

**“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, as measured by the Storage Facility Meter and/or Generating Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

**“FERC”** means the Federal Energy Regulatory Commission or any successor government agency.

**“Financial Close”** means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating PV Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forecasted Product”** has the meaning set forth in Section 4.3(b).

**“Forecasting Penalty”** has the meaning set forth in Section 4.3(f).

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.10(a).

**“Full Capacity Deliverability Status”** or **“FCDS”** has the meaning set forth in the CAISO Tariff.

**“Full Capacity Deliverability Status Finding”** means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

**“Future Environmental Attributes”** means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy originating from such solar photovoltaic generating facility to the Storage Facility; *provided*, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

**“Generating Facility Meter”** means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Generating Facility Metering Point”** means the location(s) of the Generating Facility Meter(s) shown on 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 CPUC; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (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 (c) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“**Green Tag Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“**Green Tags**” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“**Green-e Certified**” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“**Green-e Energy National Standard**” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“**Guaranteed Capacity**” means the sum of (a) the Guaranteed PV Capacity and (b) the Guaranteed Storage Capacity.

**“Guaranteed Commercial Operation Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Construction Start Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Efficiency Rate”** means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.7.

**“Guaranteed PV Capacity”** means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

**“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.

**“Idle Period Auxiliary Use”** means Auxiliary Use consumed by the Storage Facility during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

**“Imbalance Energy”** means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the applicable amount of Scheduled Energy.

**“Indemnified Party”** has the meaning set forth in Section 16.1.

**“Indemnifying Party”** has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Energy from the Facility to the Delivery Point.

“**Installed Capacity**” means the sum of (a) the Installed PV Capacity and (b) the Installed Storage Capacity.

“**Installed PV Capacity**” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as **Exhibit I-1** hereto.

“**Installed Storage Capacity**” means the lesser of (a) 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 Delivery Point (i.e., measured 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 (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller 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 300 MW.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection 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 (a) providing senior or subordinated construction, interim, back-leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area 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. In circumstances where Seller is a Non-Defaulting Party, the value of lost PTCs (if any) shall be included as “Losses” and such value shall be considered direct compensable damages, and not indirect or consequential damages.

“**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.

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth 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. For the avoidance of doubt, 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, however*, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

**“Performance Security”** means (a) cash, (b) a Letter of Credit or (c) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

**“Permitted Transferee”** means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(i) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(ii) 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.

**“Property Tax Exclusion”** means the “new construction” exclusion from California real property taxation under California Revenue and Taxation Code Section 73 or a similar Law.

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**PV Energy**” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**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 2.4.

“**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; provided, if the last officer’s certificate provided by Seller pursuant to Section 2.2(i) states that:

(a) Seller will utilize the PTC for the Generating Facility and that the PTC rate stated in such officer’s certificate is higher than Seller’s Assumed Tax Credit Rate for the PTC, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above the Assumed Tax Credit Rate for the PTC (prorated as appropriate); or

(b) Seller will utilize the ITC for the Generating Facility instead of the PTC, then (i) the Renewable Rate shall be increased to \$ [REDACTED] per MWh and (ii) if the ITC rate stated in such officer’s certificate is higher than thirty percent (30%), such Renewable Rate (i.e., \$ [REDACTED] per MWh) shall be reduced by \$ [REDACTED] /MWh for each one (1) percentage point by which such stated ITC rate is above thirty percent (30%), prorated as appropriate for partial percentage points.

“**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. **"Scheduled"** and **"Scheduling"** have corollary meanings.

**"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*, 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 (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 lights, motors, AC temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility, and includes all Auxiliary Use.

“**Storage Capability**” has the meaning in Exhibit P.

“**Storage Capacity Availability Payment True-Up**” has the meaning set forth in Exhibit C.

“**Storage Capacity Availability Payment True-Up Amount**” has the meaning set forth in Exhibit C.

“**Storage Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity and/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(s) shown on Exhibit R.

**“Storage Product”** means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

**“Storage Rate”** has the meaning set forth on the Cover Sheet; *provided,*

(a) if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that the ITC rate for the Storage Facility is higher than Seller’s Assumed Tax Credit Rate for ITC, the Storage Rate shall be reduced by \$ [redacted] per kW-month for each one (1) percentage point that the new ITC rate is above the Assumed Tax Credit Rate for ITC, prorated as appropriate for partial percentage points; and

(b) if at any time during the Delivery Term, Energy from the CAISO Grid is used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that the use of such Charging Energy (except to the extent such use is caused by Seller) results in Seller losing twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by the applicable amount per kW-month set forth in the table below for all periods during which such loss is applicable, it being acknowledged that such increase may be applied retroactively (and even after the Agreement may have been terminated), taking into account that the loss of a Property Tax Exclusion may be applied retroactively, so that this provision shall survive the termination of the Agreement but in no event, shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion, and the Parties shall cooperate in good faith to implement the foregoing:

Contract Year in which increase first becomes applicable	Storage Rate Increase (in \$ per kW-month)
1 -2	[redacted]

3 -5	██████████
6 - 10	██████████
11 - 12	██████████
13 - 14	██████████
15	██████████

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and

(c) if at any time during the Delivery Term, Energy from the CAISO Grid is used as Charging Energy, and Seller demonstrates to Buyer's reasonable satisfaction that the use of such Charging Energy (except to the extent such use is caused by Seller) results in Seller losing more than twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by the amount necessary to make Seller whole (on an after tax basis) for the resulting increased property tax expense to Seller for the remaining useful life of the Storage Facility, it being acknowledged and agreed that (1) any such Storage Rate increase may be applied retroactively (and even after the Agreement may have been terminated), taking into account that the loss of a Property Tax Exclusion may be applied retroactively, so that this provision shall survive the termination of the Agreement, (2) if there has been a Storage Rate increase pursuant to the provisions of above paragraph (b) or this paragraph (c), and thereafter the use of energy from the CAISO Grid for Charging Energy is increased (except to the extent such increase is caused by Seller) that results in Seller losing additional Property Tax Exclusion, then the Storage Rate shall be increased further in accordance with the foregoing, and (3) the Parties shall cooperate in good faith to implement the foregoing; *provided* that (A) the cumulative increases to the Storage Rate pursuant to paragraph (b) and this paragraph (c) shall not result in the cumulative Storage Rate increases exceeding the amount set forth in the table below and (B) Seller shall not request an increase to the Storage Rate under this paragraph due to use of CAISO Grid Energy for Charging Energy during any period following the expiration of the applicable statute of limitations date after which relevant taxing Governmental Authorities may no longer claim any reduction in the Property Tax Exclusion arising out of such use of CAISO Grid Energy during such period and in no event shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion.

Contract Year in which increase first becomes applicable	Storage Rate <u>Increase</u> Cap (in \$ per kW-month)
1 -2	██████████
3 -5	██████████

6 - 10	██████
11 - 12	██████
13 - 14	██████
15	██████

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“**Stored Energy Level**” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time shall be greater than the Stored Energy Level as defined in the preceding sentence, and the Facility’s energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence.

“**Supplementary Capacity Test Protocol**” has the meaning set forth in Section 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 (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means PV Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Total YTD Calculation Intervals**” has the meaning set forth in Exhibit P.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means 8minutenergy US Solar, LLC, a Delaware limited liability company.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term, 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, 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.

(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 Storage Facility 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, including any CAISO Certification necessary for the Storage Facility to commence (i) general charging and discharging in the CAISO market and (ii) the provision of Ancillary Services in the CAISO market; [REDACTED]

(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, 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;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

(i) Seller has delivered to Buyer an officer's certificate stating:

(a) whether Seller will utilize PTC or ITC for the Generating Facility, and the applicable PTC or ITC rate that would apply to the Generating Facility as of the date of such officer's certificate if the Generating Facility were "placed in service" for federal income tax purposes on the Adjustment Date; provided, if Seller's prior officer's certificate indicated it will utilize PTC for the Generating Facility, and the United States Internal Revenue Service provides any update to such PTC rate (i.e., to the rate for the calendar year in which the Adjustment Date occurs) after the date of such officer's certificate, Seller shall provide another officer's certificate informing Buyer of such updated PTC rate; provided further, that Seller may elect to use ITC (rather than PTC) for the Generating Facility only if either:

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(1) the Renewable Rate would (after application of clause (b) of the definition of "Renewable Rate") not exceed [REDACTED] or

(2)(A) Seller in good faith determines, based on input from nationally recognized tax counsel, either that the Generating Facility is ineligible for PTC, or that there is material risk to Seller in qualifying for PTC for the Generating Facility at the same time as qualifying for the ITC for the Storage Facility and (B) Seller has sent written notice to Buyer prior to the Commercial Operation Date reasonably explaining the details of such Seller determination and within thirty (30) days following the date of such notice Buyer has not sent written notice back to Seller electing to terminate this Agreement, which termination right Buyer shall have upon any such ITC election (it being agreed that any such termination shall be no-fault and Buyer shall return to Seller all Development Security); and

(b) the ITC rate Seller will utilize for the Storage Facility.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably

requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. 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.

2.4 **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*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

### ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. 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 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 or revenues from such imbalances shall be solely for the account of Buyer, except as set forth in Section 4.5(k).

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*, 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 ninety (90) 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 and expected duration of the Test Energy. Buyer shall have the right, but not the obligation, to purchase from Seller all Test Energy and associated Green Attributes from the Generating Facility (but not Storage Product) on an as-available basis for an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). Buyer shall notify Seller within thirty (30) days after receipt of Seller's notice whether Buyer elects to purchase the Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6. If Buyer elects not to purchase the Test Energy, Seller may sell the Test Energy

into the CAISO until the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, in such case Seller shall be entitled to all CAISO and other revenues arising from such Test Energy.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable 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 from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (1) 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 (2) the Net Qualifying Capacity of the Facility, multiplied by (ii) the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, not to exceed ten percent (10%) of the Qualifying Capacity amount in any such RA Shortfall Month, and *provided, further*, that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information 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 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 changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Eligibility.** 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.

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**"; *provided* that 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; and *provided, further,*

[REDACTED]

(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, 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 for the remainder of the Delivery Term; *provided, however*, that 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.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 Project Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *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. Additionally, within sixty (60) days following the Amendment Effective Date, the Parties agree in good faith to attempt to negotiate a second amendment to the Agreement that would reduce the Renewable Rate by [REDACTED] ( [REDACTED] ) per MWh in return for allowing Seller to increase the size of the Generating Facility and require Buyer to cause "clipped energy" from the Generating Facility to be charged into the Storage Facility, *provided*, neither Party shall be obligated to agree to any such second amendment, or to incur any expense in connection with such amendment, 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 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 including without limitation any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging Energy will 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 Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

#### 4.2 **Title and Risk of Loss**.

(a) Energy. Title to all PV Energy shall pass and transfer from Seller to Buyer at the Generating Facility Metering Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-2, F-3, and F-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer

fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

#### 4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders. If Seller elects to utilize the PTC for the Generating Facility, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount (such amount, converted to a dollar per MWh basis, the "**Deemed Delivered Energy Rate**") equal to (i) the amount of Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (ii) (A) the amount of Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986, as amended (the "Code") as in effect for such Buyer Curtailment Period (and taking into account any then-applicable PTC rate increases under Section 45 of the Code), converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(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 (for the avoidance of doubt, without double counting any penalties for which Seller is liable under Section 4.5(k)(i)).

(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 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. 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) Charging Generally. Buyer (or its Scheduling Coordinator) shall be responsible for Scheduling all Charging Energy. To the extent such Charging Energy is Scheduled, and 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(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy is supplied from PV Energy or directly from the CAISO Grid, 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 (which originated as PV Energy) to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to

carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), 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. 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. 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 will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as automatically updated in accordance with the definition of Discharging Notice). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), 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.

(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 under Seller's control charges or discharges the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any failures to comply with charging or discharging dispatches for which there is an express remedy for such failure in Section 4.5(c) or (k) shall not give rise to a Seller breach or Seller liability under this Section 4.5(f)), it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all third party claims for actual costs or losses associated therewith, and be responsible to Buyer for any third party claimed 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) 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 be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) 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 (for the avoidance of doubt) otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible to reimburse Buyer for all CAISO charges and penalties payable by Buyer to CAISO and 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 or Exhibit P, and is not capable of responding to Automated Dispatches or Alternative Dispatches [REDACTED]

[REDACTED] such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as provided in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer’s sole remedy arising out of any such incapability of responding to Automated Dispatches or Alternative Dispatches.

(iii) [REDACTED]

[REDACTED] For each Calculation Interval during the Delivery Term after which the Storage Facility has obtained initial CAISO Certification for the provision of Ancillary Services and is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer’s sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch.

(iv) For clarity, 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) during charging and discharging of the Storage Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use that is integral to charging or discharging the Storage Facility (e.g., HVAC, fire suppression systems, telecommunications equipment and battery management systems) may be served by Charging Energy or Discharging Energy, (ii) Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use) except for Auxiliary Use, (iii) the supply of Auxiliary Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iv) Seller shall reimburse Buyer for all Idle Period Auxiliary Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer is used by Seller for Auxiliary Use (including Idle Period Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible for (and shall reimburse Buyer for, as applicable) any and all costs, penalties and charges resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff.

4.6 Reduction in Energy Delivery Obligation. For the avoidance of doubt, and in no way limiting Sections 3.1, 3.8 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. Seller will 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 or planned for the Storage Facility during any hours during the period from each June 1 through October 31, 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 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 reduce deliveries of Product during any period of such Planned Outages. 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* that Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse 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 during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "Guaranteed Energy Production" means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point or to the Storage Facility. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer or to the Storage Facility but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("Lost Output"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *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 Seller's payment of liquidated damages 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* that 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.

(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 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 Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no

later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and for the avoidance of doubt, Buyer shall pay all Charging Energy costs and pay Seller the Renewable Rate for all PV Energy used as Charging Energy. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment of the Renewable Rate to Seller for all PV Energy used as Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, 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 (f) 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, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or 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, 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 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 the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the 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.

(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, the phrase "the Project's output" means all PV 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.

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 commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, 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, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* 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.**

(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. Upon the reasonable request from time to time by Buyer, Seller shall provide Buyer with good faith estimates (based on Prudent Operating Practice) as to the quantities of Station Use and Auxiliary Use consumed by the Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) The foregoing 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 Discharging Notices as set forth in the definition of 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.

[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 request permission from CAISO to test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present

during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *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 produced by the Generating Facility as read by the Generating 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 Energy Out and Energy In as read by the Storage Facility Meter, estimated Idle Period Auxiliary Use, the amount of 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.**

(a) To secure its obligations under this Agreement, Seller has delivered the original 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.

(b) Within forty-five (45) days after the Amendment Effective Date, Seller shall increase the amount of the Development Security to the amount thereof required under the Agreement (after the Amendment Effective Date) by either delivering to Buyer an additional amount of Development Security, or arranging to substitute the existing Development Security with replacement Development Security in the amount now required.

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 (i.e., cash, Letter of Credit or Guaranty, as applicable); *provided, however*, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer's acceptance of a Guaranty shall be subject, in Buyer's sole discretion, to Guarantor meeting Buyer's credit requirements.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to

the final sentence of this Section 8.9):

(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 these obligations are satisfied in full.

**8.10 Buyer Financial Statements.** Buyer shall provide to Seller both upon request and as indicated below: (a) within forty-five (45) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer's annual report, which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members.

## ARTICLE 9 NOTICES

**9.1 Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on 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 [REDACTED] landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; [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 (including resulting from 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, 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 or exceed one hundred twenty (120) days, 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 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) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended hereunder, including by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B, by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B, and/or by 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 applicable annual forecast provided by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("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 the 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 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; 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 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*, 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 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 will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) 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 will be based on the value of Seller's assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for

the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **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 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.

If the Agreement is terminated by Buyer prior to the Commercial Operation Date pursuant to Section 2.2(i)(ii)(B), 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 such early termination date if either of the proposed rates applicable the Generating Facility or the Storage Facility is lower than the Renewable Rate or the Storage Rate (respectively) applicable hereunder as of such early termination date associated with the ITC and applicable ITC rate set forth in the officer's certificate provided by Seller pursuant to Section 2.2(i), unless Seller first complies with the following provisions of this Section. If this Section applies based on the preceding sentence, then:

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(a) if Seller proposes to utilize the ITC for financing some or all of the Generating Facility, Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; and

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(b) if Seller proposes to utilize the PTC for financing some or all of the Generating Facility, then:

(1) if Seller or its Affiliate, as applicable, demonstrates to Buyer's reasonable satisfaction, that Seller was only able to utilize the PTC (i) after material costs to reconfigure the Facility or enter into or revise project-related agreements, or (ii) under financing terms materially more costly to Seller than were reasonably available to Seller as of the early termination date), then Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; or

(2) if preceding paragraph (1) does not apply, then Seller shall first offer the Product to Buyer at the same prices as would have been applicable under this Agreement prior to its early termination date (for both the Generating Facility and the Storage Facility) if Seller had elected to use PTC (rather than ITC) for the Generating Facility.

If this Section applies as a result of an Agreement termination under 2.2(i)(ii)(B), then upon Seller or Seller's Affiliates providing Buyer with a written offer to sell the Product on the terms and conditions materially similar to the terms and conditions contained in this Agreement (but at the applicable prices described above), if Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, Seller may transact with third parties.

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Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

**11.7 Rights And Remedies Are Cumulative.** Except where liquidated damages 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.

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* that 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.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE

OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 4.10(e) 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 Amendment 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 Amendment 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 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:

(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* that such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the

report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (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 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 the Agreement capable of cure in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request,

Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, *provided* that 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.

(i) In connection with any financing or refinancing of the Facility by Seller, or as may be required by Buyer to effectuate a Buyer Financing Assignment pursuant to Section 14.5, the Parties agree to provide customary estoppel certificates, including as to the following: (i) the organization, existence and good standing of Buyer or Seller, as applicable, under applicable laws, (ii) Buyer's or Seller's, as applicable, power and authority to execute, deliver and perform the estoppel certificate and this Agreement, (iii) the enforceability of the estoppel certificate and this Agreement, (iv) the occurrence or existence of any default, Event of Default, or Force Majeure under this Agreement, (v) any amendment, modification, supplementation, or assignment of this Agreement, (vi) any pending or threatened action or proceeding against Buyer or Seller, as applicable, that could reasonably be expected to affect Buyer's or Seller's, as applicable, ability to perform this Agreement or affect the enforceability of this Agreement, and (vii) other similar customary matters reasonably requested by an equity provider or tax equity provider, as applicable.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided, 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 a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon reasonable prior Notice to Seller, *provided* that as conditions to any such assignment: (a) Seller and Buyer (and Seller's financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as **Exhibit S** ("**Assignment Agreement**"), such agreement not to be unreasonably withheld; (b) at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (i) Buyer's Credit Rating at the time of such assignment (if applicable), and (ii) Baa3 from Moody's and BBB- from S&P; (c) as reasonably requested by Buyer Assignee, Seller shall provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (d) as reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## **ARTICLE 16 INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used by (or provided by) Seller in connection with the Facility (an “**IP Indemnity Claim**”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided, 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 contractual liability 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), and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Twenty Million Dollars (\$20,000,000). The coverage required under this Section 17.1(a) may be provided through a combination of general liability, umbrella liability and/or excess liability policies. 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 will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment has arrived at 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) per occurrence and in the aggregate; (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 (except as noted above in 17.1(e) with respect to the Construction All-Risk, which will not be procured until the start of construction) 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 except ten (10) days prior notice for cancellation for nonpayment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18 CONFIDENTIAL INFORMATION**

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a

need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its 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*, 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. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that: (i) this Agreement is intended to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code, and (ii) neither Buyer nor any related entity operates the Facility for purposes of Section 7701(e)(4)(i) of the Code.

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, after the Effective Date, (a) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, [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 (b), 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.

19.14 **Development Cure Period Claims.**

(a) The Parties acknowledge and agree that as of the Amendment Effective Date: (A) pursuant to Article 10, and Section 4 of Exhibit B, of the Agreement, Seller has previously provided notice of facts or circumstances resulting in significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date and Commercial Operation on or before the Guaranteed Commercial Operation Date, as more particularly set forth in the table immediately below (these facts or circumstances, with any other facts or circumstances satisfying the requirements of Article 10 and Section 4 of Exhibit B of the Agreement that Seller is aware of and could notice to Buyer as of the Amendment Effective Date, the "**Development Cure Period Claims**"); and (B) the Parties intend to resolve all matters with respect to the Development Cure Period Claims (including for potential liquidated damages for unexcused delays which might be owed by Seller to Buyer) by entering into this amended and restated version of the Agreement on the Amendment Effective Date.

Development Cure Period Claims
--------------------------------

1. Facts and circumstances relating to the COVID-19 pandemic arising prior to the Amendment Effective Date and their proximately-caused disruptions to global supply chains, including their effect on labor, materials, and equipment.
2. The [REDACTED] by U.S. Customs and Border Protection on silica-based products made by [REDACTED], and its proximately-caused effects on Seller's ability to obtain photovoltaic modules for the Project.
3. The Anti-Circumvention Investigation initiated March 28, 2022 by the U.S. Department of Commerce, and its proximately-caused effect on Seller's ability to obtain photovoltaic modules for the Project.
4. The Russian invasion of Ukraine and its proximately-caused disruption of supply chains and the availability of key commodities, including nickel and lithium carbonate impacting the availability of BESS equipment.

(b) As of the Amendment Effective Date, all contractual rights, obligations, consequences, and disputes arising out of or relating to the Development Cure Period Claims are fully and finally terminated, resolved, and settled, by entering into this amended and restated version of the Agreement. For avoidance of doubt, (a) Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted as a consequence of any Development Cure Period Claims, and (b) Buyer acknowledges and agrees that 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 of this amended and restated version of the Agreement shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller based on facts or circumstances occurring (i) before the Amendment Effective Date that Seller was not aware of or could not notice to Buyer and (ii) on and after the Amendment Effective Date unless proximately caused by events and circumstances giving rise to the Development Cure Period Claims. Seller represents and warrants as of the Amendment Effective Date that, except as set out in the table above, 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.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Amendment Effective Date.

20SD 8ME 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:** Rexford Solar Farm

**Site includes all or some of the following APNs:** 339-110-001, 339-050-006, 339-050-007, 339-050-008, 339-050-013, 339-050-004, 339-110-008, 339-110-009, 339-080-016, 339-080-005, 339-080-013, 339-080-015, 339-070-014, 339-070-015, 339-070-016, 321-200-006, 321-190-001, 321-190-002, 321-210-004, 339-070-026, 321-070-014, 321-070-026, 323-040-006, 323-040-008, 323-040-007.

**County:** Tulare

**Zip Code:** 93215

**Latitude and Longitude:** 35.840599, -119.082345

**Facility Description:** 300 MW(AC) PV + 960 MWh (240 MW(AC) x 4 hours) storage

**Delivery Point:** SCE Vestal Substation

**Storage Facility Meter Point:** See Metering Diagram in [Exhibit R](#)

**Generating Facility Metering Point:** See Metering Diagram in [Exhibit R](#)

**P-node applicable to Facility's CAISO ID:** VESTAL\_2\_B1

**Transmission Provider:** Southern California Edison Company

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## 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 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

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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 ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. 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.

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4. **Extension of the Guaranteed Dates.** Independent of Seller’s extension rights under Section 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]
- 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 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 twenty (120) 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 ten (210) 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 (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 and Deemed Delivered Energy Rate. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus the Deemed Delivered Energy Rate (if Seller has elected PTC for the Generating Facility, and if not, the Renewable Rate) for each MWh of Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each 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 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

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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

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:

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:

Capacity Availability Factor =  $\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$

- (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:

Capacity Availability Factor =  $\left( \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}} \right) * 1.5$

- (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

#### 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, 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 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 (in order of preference) telephonically or by 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

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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 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 these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer 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

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provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, 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.

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**EXHIBIT F-1**

**FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT**

[MW Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11 00	12:00	13:00	14:00	15:00	16 00	17:00	18:00	19:00	20:00	21 00	22:00	23:00	24:00	
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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.

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**EXHIBIT F-2**

**FORM OF MONTHLY EXPECTED PV ENERGY REPORT**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11 00	12:00	13:00	14:00	15:00	16 00	17:00	18:00	19:00	20:00	21 00	22:00	23:00	24:00	
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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

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**EXHIBIT F-3**

**FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT**

[MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11 00	12:00	13:00	14:00	15:00	16 00	17:00	18:00	19:00	20:00	21 00	22:00	23:00	24:00	
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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.

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**EXHIBIT F-4**

**FORM OF MONTHLY AVAILABLE STORAGE CAPABILITY REPORT**

[MWh Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11 00	12:00	13:00	14:00	15:00	16 00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
Day 1																									
Day 2																									
Day 3																									
Day 4																									
Day 5																									
[insert additional rows for each day in the month]																									
Day 29																									
Day 30																									
Day 31																									

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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## 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 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,

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*provided* that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

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**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. The Storage Facility is physically capable of receiving Charging Energy that was generated by the Generating Facility, as well as Charging Energy from the CAISO Grid that was not generated by the Generating Facility.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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**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 Energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is \_\_ MW AC and shall be the “**Installed Capacity**”;

and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) 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-1

**EXHIBIT I-2**

**FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE**

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [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 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) 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]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,  
a California joint powers authority  
555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor  
Los Angeles, CA 90013

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”), 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 representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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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, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

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[Bank Name]

---

[Insert officer name]  
[Insert officer title]

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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 \_\_\_\_\_

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## 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, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty

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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

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(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

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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).

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- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 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.

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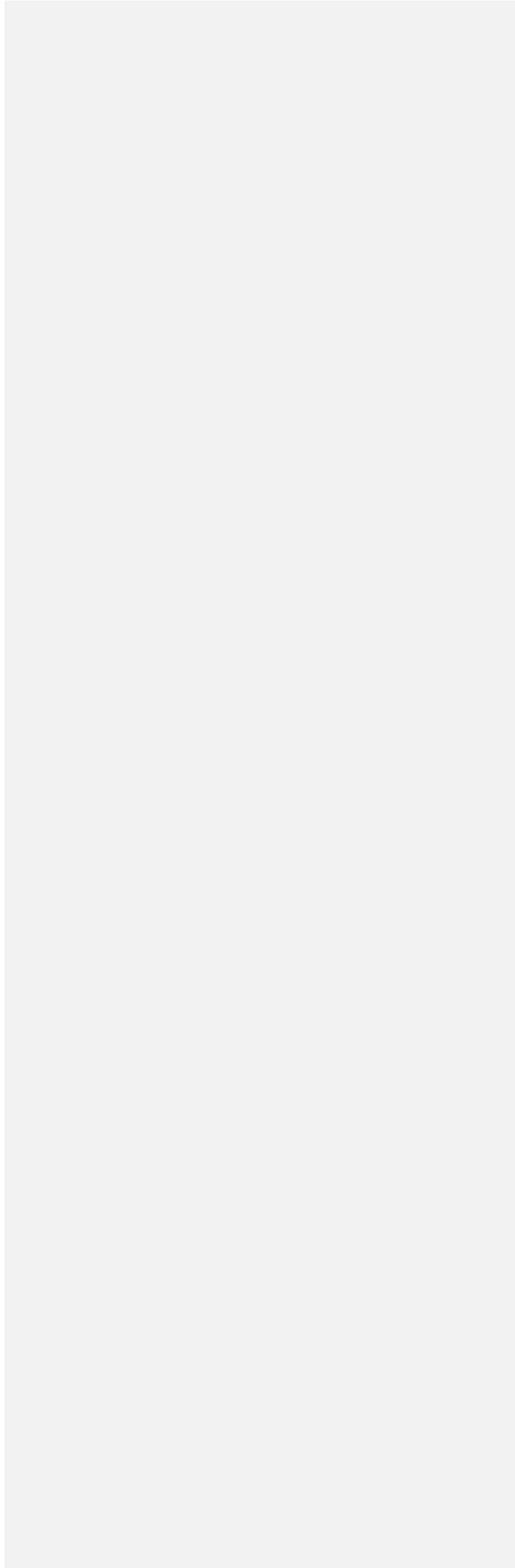
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[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT N**

**NOTICES**

<p><b>20SD 8ME LLC, a Delaware limited liability company</b>          (“Seller”)</p>	<p><b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</b> (“Buyer”)</p>
<p><b>All Notices:</b></p> <p>Street: 4370 Town Center Blvd., Suite 110          City: El Dorado Hills, CA 95762          Attn: Transactions</p> <p align="center">c/o 8minute Solar Energy LLC          Phone: (916) 608-9060          Facsimile: (916) 608-9861          Email: transactions@8minute.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>          Duns:          Federal Tax ID Number [REDACTED]</p>	<p><b>Reference Numbers:</b>          Duns:          Federal Tax ID Number:</p>
<p><b>Invoices:</b>          Attn: Accounts Payable          c/o 8minute Solar Energy LLC          Phone: (323) 525-0900          Facsimile: (310) 424-7112          E-mail: invoice@8minute.com</p>	<p><b>Invoices:</b>          Attn: Director, Power Planning &amp; Procurement          Phone: (213) 269-5870          E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling:</b>          Attn: Transactions          c/o 8minute Solar Energy LLC          Phone: (323) 525-0900          Facsimile: (310) 424-7112          Email: transactions@8minute.com</p>	<p><b>Scheduling: TBD</b>          Attn:          Phone:          Email:</p>
<p><b>Confirmations:</b>          Attn: Transactions          c/o 8minute Solar Energy LLC          Phone: (323) 525-0900          Facsimile: (310) 424-7112          Email: transactions@8minute.com</p>	<p><b>Confirmations:</b>          Attn: Director, Power Planning &amp; Procurement          Phone: (213) 269-5870          Email: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b>          Attn: Account Receivable          c/o 8minute Solar Energy LLC          Phone: (323) 525-0900          Facsimile: (310) 424-7112          E-mail: transactions@8minute.com</p>	<p><b>Payments:</b>          Attn: Director, Power Planning &amp; Procurement          Phone: (213) 269-5870          E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b>          BNK: Wells Fargo Bank, N.A.          ABA: 121000248          ACCT: [REDACTED]</p>	<p><b>Wire Transfer:</b>          BNK: River City Bank          ABA: 121-133-416          ACCT: XXXXXX8042</p>

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**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 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 has 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 Storage 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.**

- 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. [Intentionally Blank].

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C. 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 using a Remote Terminal Unit (RTU), 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 SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA 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.

D. 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 Guaranteed Storage Capacity continuously for a five and a half (5.5)-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. 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 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 85%, continued by the

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electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), until the SOC reaches 100%, not to exceed five and a half (5.5) 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 Energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
  - (4) Stored Energy Level (MWh) and SOC (%).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg) 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, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:
- (1) That the CT successfully started;
  - (2) The maximum sustained discharging real power level for four (4) consecutive hours pursuant to A(1) above;
  - (3) The maximum sustained charging real power 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 real power level registered during the CT (for purposes of calculating the ramp rate);
  - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging real power level registered during the CT (for purposes of calculating the ramp rate);

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- (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least 80% of one (1) Cycle in the 24-hour period prior to the beginning of the CT.
- (2) Abnormal Conditions. If abnormal operating or grid conditions that prevent the prescribed testing or recordation of any required parameter (including low irradiance) occur prior to or during a CT that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. Except as provided in Part I(D), 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

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- (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 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 (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 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 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

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of (a) the Storage Facility has reached 100% SOC or (b) five and a half (5.5) hours have elapsed since the Storage Facility commenced charging.

- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five and a half (5.5) 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.
- (6) Following an agreed-upon rest period after sunset, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity.

- **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.

**B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of

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0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
  - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

#### C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -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.

**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:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left( 1 - \text{the lesser of: } \frac{\text{A}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

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“**A**” is the “available Effective Storage Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the then-current Effective Storage Capacity.

“**Storage Capability**” means the sum the following (taking into account the SOC at the time of calculation): of (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) 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 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 240 MW charging and [REDACTED] (degrees 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 C).

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(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 the such period of time.

**EXHIBIT Q**  
**OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller’s commencement of Facility construction); *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

**a. STORAGE FACILITY OPERATING RESTRICTIONS**

<b>File Update Date:</b>	8/26/2020	
<b>Technology:</b>	Battery Energy Storage	
<b>Storage Unit Name:</b>	Rexford	
<b>A. Contract Capacity</b>		
<b>Guaranteed Storage Capacity (MW):</b>	240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>Effective Storage Capacity (MW):</b>	240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>B. Total Unit Dispatchable Range Information</b>		
<b>Interconnect Voltage (kV)</b>	230 kV	
<b>Maximum Storage Level (MWh):</b>	960 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>Minimum Storage Level (MWh):</b>	0 at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>Stored energy capability (MWh):</b>	960 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>Maximum Discharge (MW):</b>	240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point	
<b>Maximum Charge (MW):</b>	240 MW at the Storage Facility Meter	
<b>Annual Average SOC:</b>		
<b>Guaranteed Efficiency Rate:</b>	See Cover Sheet	
<b>Maximum Cycles / Contract Year:</b>	Cycles	
<b>C. Charge and Discharge Rates</b>		
<b>Mode</b>	<b>Maximum (MW)</b>	<b>Ramp Rate Description</b>
Energy (Charge)	240	
Energy (Discharge)	240	
<b>D. Ancillary Services</b>		
<b>Frequency regulation is included:</b>	Yes	

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<b>Spin is included:</b>	Yes
<b>E. Additional Restrictions</b>	
[N/A]	

**b. GENERATING FACILITY OPERATING RESTRICTIONS**

1. The sum of PV Energy plus Discharging Energy shall not exceed the Interconnection Capacity Limit.

**EXHIBIT R**  
**METERING DIAGRAM**

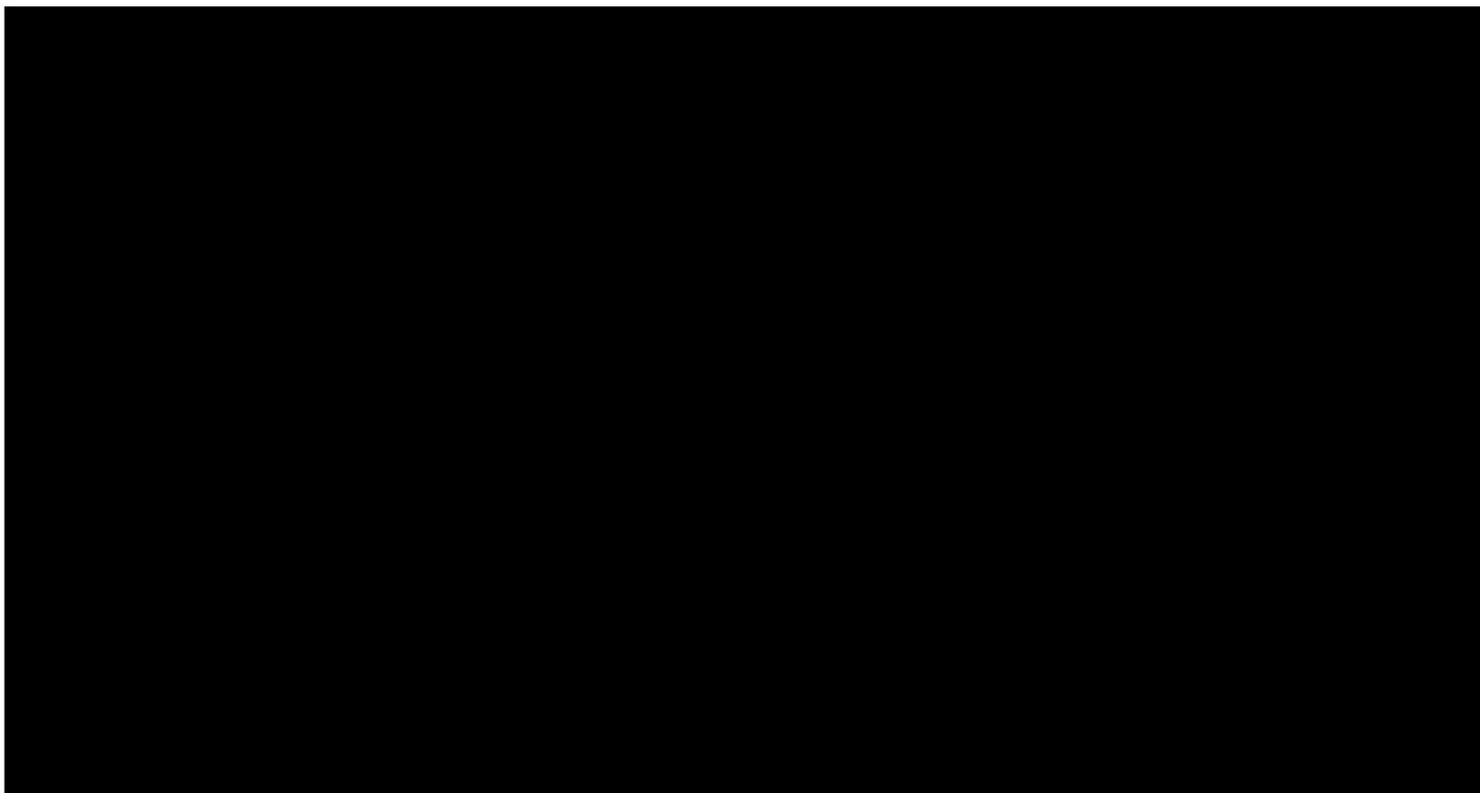


Exhibit R – 1

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## 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 will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries

Exhibit S – 1

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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, 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.

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IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By: .....

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....

Name:

Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“Assignment Period”** means the period beginning on [\_\_\_\_\_] and extending until [\_\_\_\_\_] , provided 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.

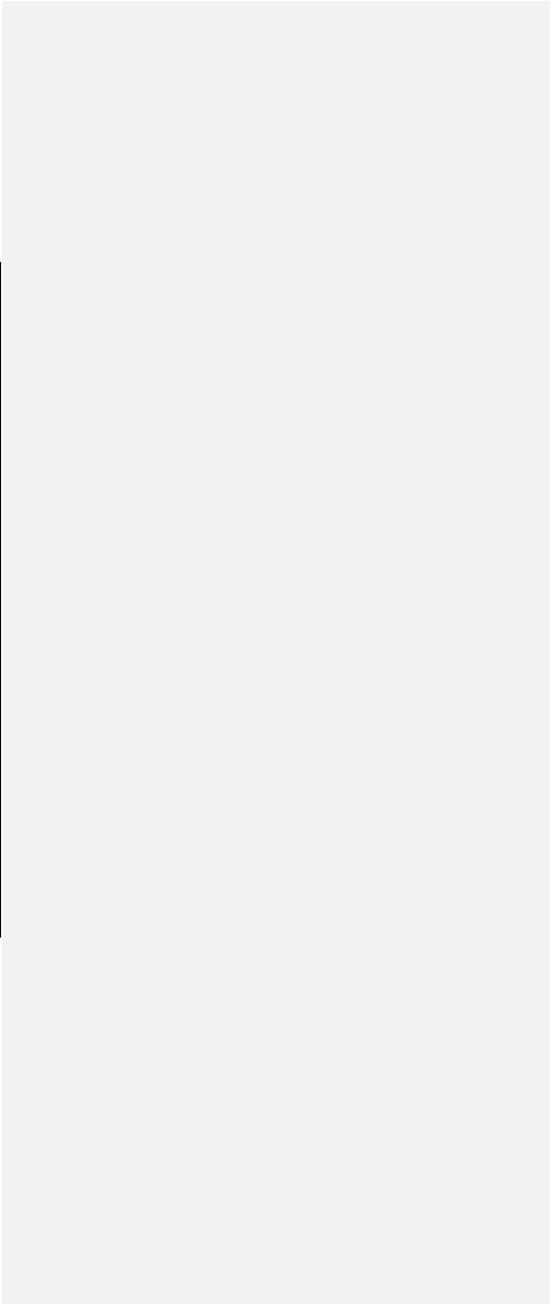
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<sup>1</sup> The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.

<sup>2</sup> To include transfer and settlement mechanics for RECs, as applicable.

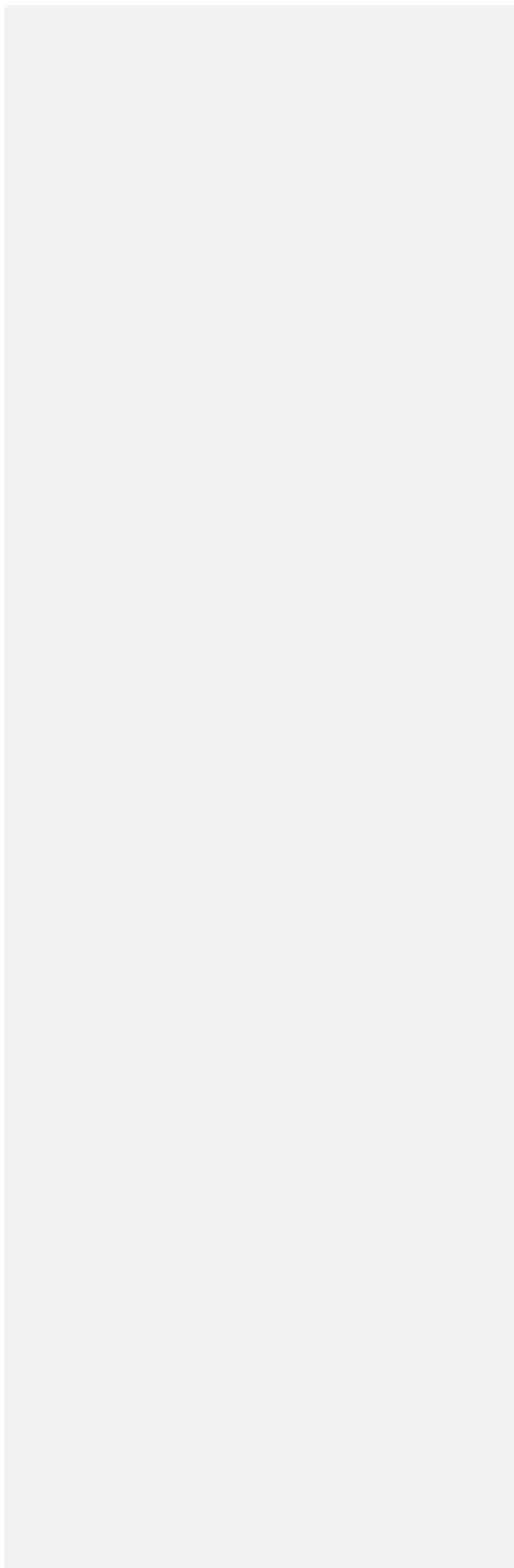
**EXHIBIT T**

**EXAMPLE CALCULATIONS APPLYING PROVISIONS OF SECTION 4.5(K)(I)**



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Exhibit T - 1



## AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [\_\_\_\_], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Daggett Solar Power 2 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 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 and Buyer has acknowledged significant delays to the Milestone schedule (the “**Development Cure Period Claims**”), 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 described in that certain Letter Agreement, dated as of July 11, 2022, by and between Buyer and Seller (the “**Letter Agreement**”).
- 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) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	\$ [REDACTED] /MWh (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	\$█/kW-mo. (flat) with no escalation

(b) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

**Seller’s Assumed Tax Credits:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at an “energy percentage” of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

(c) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

**“Charging Energy”** means all Energy 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.

**“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, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

**“Property Tax Exemption”** means the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$█/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller’s Assumed Tax Credits, or (b) the ITC for the Generating Facility and that that the ITC “energy percentage” claimed for the Generating Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$█/MWh for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%).

**“Seller’s Assumed Tax Credits”** has the meaning set forth on the Cover Sheet.

**“Storage Rate”** has the meaning set forth on the Cover Sheet; provided, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that the ITC “energy percentage” claimed for the Storage Facility is higher than the ITC “energy percentage” set forth as Seller’s Assumed Tax

Credits, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), and (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$ [REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$ [REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the Storage Rate shall increase from \$ [REDACTED]/kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$ [REDACTED]/kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent increase greater than 25% plus the product of \$ [REDACTED] per kW-month and twenty-five (25).

(d) A new Section 2.2(k) is added as follows:

(k) Seller has delivered to Buyer an officer’s certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC “energy percentage” rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer’s certificate.

(e) 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.

(f) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(g) Section 4.4(b) is replaced in its entirety with the following:

(i) 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 in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(h) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV 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.

(i) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period 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.

(j) 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.

(k) 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(h) 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(h) means efforts consistent with and subject to Section 3.12.

- (l) In Section 3 of Exhibit H, the phrase "and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility" is added to the end thereof.
- (m) In Section II of Exhibit Q, Item 3 "Grid Charging" is replaced in its entirety by the phrase "[Intentionally Omitted]".

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 and the Letter Agreement. 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 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 (less any Development Cure Period claimed by Seller and acknowledged by Buyer in the Letter Agreement). Seller represents and warrants as of the Effective Date of this Amendment that 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. Pursuant to the Letter Agreement, Buyer acknowledges that Buyer has granted Seller a seventy-nine (79) day Development Cure Period such that the Guaranteed Commercial Operation Date is December 19, 2023.

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:”**

**DAGGETT SOLAR POWER 2 LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

**AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT**

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [\_\_\_\_], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Arica 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 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 “12/1/2023” is deleted and replaced with “6/1/2024”.
  - (b) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “5/31/2023” is deleted and replaced with “9/1/2023”.
  - (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
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA [ X] 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	8/1/2023
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	6/20/2023
Expected Date of CAISO Commercial Operation	4/1/2024
Expected Commercial Operation Date	6/1/2024

(d) The Delivery Term Expected Energy table on the Cover Sheet is replaced in its entirety with the following table:

Contract Year	Expected Energy (MWh)
1	317,978
2	██████████
3	██████████
4	██████████
5	██████████

6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

(e) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

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

(f) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

**Seller’s Assumed Tax Credits:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at an “energy percentage” of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

- (g) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

**“Charging Energy”** means all Energy 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.

**“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, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

**“Property Tax Exemption”** means the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$█/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller’s Assumed Tax Credits, or (b) the ITC for the Generating Facility and that the ITC “energy percentage” claimed for the Generating Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$█/MWh for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%).

**“Seller’s Assumed Tax Credits”** has the meaning with respect to each of the ITC and PTC, as applicable, as set forth on the Cover Sheet.

**“Storage Rate”** has the meaning set forth on the Cover Sheet; *provided*, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that the ITC “energy percentage” claimed for the Storage Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Storage Rate shall be reduced by \$█ per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$█ per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$█ per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the

Storage Rate shall increase from \$ [REDACTED] /kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$ [REDACTED] /kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent increase greater than 25% plus the product of \$ [REDACTED] per kW-month and twenty-five (25).

(h) A new Section 2.2(k) is added as follows:

(k) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC "energy percentage" rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer's certificate.

(i) 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.

(j) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(k) Section 4.4(b) is replaced in its entirety with the following:

(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 in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

- (l) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV 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.

- (m) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period 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.

- (n) 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.

- (o) 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(h) 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(h) means efforts consistent with and subject to Section 3.12.

- (p) In Section 10.4(a), the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)”.
- (q) 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)”.
- (r) In Section 3 of Exhibit H, the phrase “and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility” is added to the end thereof.
- (s) In Section II of Exhibit Q, Item 3 “Grid Charging” is replaced in its entirety by the phrase “[Intentionally Omitted]”.

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:”**

**ARICA SOLAR, LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

**ATTACHMENT 1**

**Development Cure Period Claims**

Claims **for** [REDACTED] relating to the events described below:

- Delays resulting from module delivery delays impacted by (i) U.S. Customs and Border Protection's enforcement of [REDACTED] and (ii) [REDACTED] from the COVID-19 pandemic, as described in notices sent to Buyer on February 7, 2022, June 17, 2022, and September 27, 2022.
- Delays resulting from module delivery delays impacted by the [REDACTED] investigations by the U.S. Department of Commerce into whether solar cells and modules [REDACTED] are circumventing existing antidumping and countervailing tariffs [REDACTED], as described in notices sent from Seller to Buyer on May 16, 2022, and September 27, 2022.

### AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [\_\_\_\_], 2022 (the “**First Amendment Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Chalan CA Solar Storage, 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 September 4, 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. 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.
- C. The Agreement originally provided for the Storage Facility to have a capacity of 25 MW/100MWh. The Parties now intend to increase the capacity up to a maximum of 65 MW/260MWh. However, Buyer is only willing to accept as much Storage Capacity as Seller can obtain FCDS status for. Accordingly, the Parties also intend to provide that the Guaranteed Storage Capacity will be increased by the amount of FCDS Seller is allocated by the CAISO, and that the Storage Rate will increase pro rata with such reduction.

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 “Facility Description” in Exhibit A are amended to add the following sentence at the end of each paragraph: “The capacity of the battery energy storage system may be increased up to a maximum of 65 MW/260 MWh in accordance with the terms of this Agreement.”
  - (b) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “December 31, 2023,” is deleted and replaced with “Guaranteed Commercial Operation Date – December 31, 2024, and Phase II Guaranteed Commercial Operation Date – June 1, 2025, in each case”.
  - (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
<b>Initial Synchronization</b>	5/31/2024
<b>Expected Commercial Operation Date</b>	12/31/2024

- (d) The following additional row is added to the bottom of the Milestone table on the Cover Sheet:

<b>Phase II Expected Commercial Operation Date</b>	6/1/2025
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- (e) The Section “Guaranteed Capacity” is deleted in its entirety from the Cover Sheet.
- (f) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

<b>Contract Year</b>	<b>Renewable Rate</b>
1 – 15	\$ [REDACTED] /MWh (flat) with no escalation

The Storage Rate shall be:

<b>Contract Year</b>	<b>Storage Rate</b>
1 – Phase II COD	\$ [REDACTED] /kW-mo. (flat) with no escalation
Phase II COD – 15	\$ [REDACTED] /kW-mo. (flat) with no escalation

- (g) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

**Seller’s Assumed Tax Credits:** As of the First Amendment Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%).

- (h) The Section “Security and Guarantor” is deleted in its entirety from the Cover Sheet.
- (i) The following Definitions in Section 1.1 are replaced in their entirety as follows:

“**Charging Energy**” means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Points by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses. All Charging Energy shall be used solely to charge the Storage 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*, any such operating instruction shall be in accordance with the Operating Restrictions, 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.

**“Commercial Operation Storage Capacity Test”** means any Phase I Commercial Operation Storage Capacity Test or Phase II Commercial Operation Storage Capacity Test.

**“Development Security”** means the sum of the Phase I Development Security and the Phase II Development Security.

**“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 the most recent Storage Capacity Test (including a 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) twenty-five (25) MW (with respect to a Phase I Commercial Operation Storage Capacity Test), (ii) the Guaranteed Storage Capacity (with respect to a Phase II Commercial Operation Storage Capacity Test), or (iii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

**“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; *provided*, if the Phase II FCDS Award is for an amount of five (5) MW or more, the Guaranteed Storage Capacity shall be increased by an amount equal to the Phase II FCDS Award, not to exceed an additional forty (40) MW AC, for a maximum total Guaranteed Storage Capacity of 65 MW AC.

**“Installed Storage Capacity”** means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point, that achieves Commercial Operation and Phase II Commercial Operation (if applicable), 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.

**“Performance Security”** means the sum of the Phase I Performance Security and, as of the Phase II Commercial Operation Date (or thereafter in accordance with Section 5(b) of Exhibit B), the Phase II Performance Security.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(j) states that Seller will claim an ITC rate for the Generating Facility that is higher than the ITC rate as set forth on the Cover Sheet, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each one (1) percentage point that the claimed ITC rate is above 30 percent (30%).

**“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; *provided*, the term “Storage Facility” shall not include the Phase II Capacity until the Phase II Commercial Operation Date.

“**Storage Rate**” has the meaning set forth on the Cover Sheet; *provided*, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(j) states that the ITC rate for the Storage Facility is higher than Seller’s assumed ITC rate as set forth on the Cover Sheet, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the new ITC rate is above thirty percent (30%), (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and such Charging Energy results in Seller not being able to claim the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law applicable to the Storage Facility, the Storage Rate shall not be further adjusted except pursuant to section (a) of this definition, and (c) as of Phase II Commercial Operation Date or cancellation of Phase II per Section 3.7(d), for every one (1) MW that the Installed Storage Capacity is less than sixty-five (65) MW, the Storage Rate shall be increased by \$ [REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition).

(j) The following defined terms are added to the definitions in Section 1.1 in alphabetic order:

“**Expected Phase II Commercial Operation Date**” has the meaning set forth on the Cover Sheet.

“**First Amendment**” means the first amendment to this Agreement executed by the Parties as of the First Amendment Effective Date.

“**First Amendment Effective Date**” means the date assigned such meaning in the First Amendment.

“**Phase I Commercial Operation Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity and/or initial Efficiency Rate, in connection with the Commercial Operation Date and conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Phase I Development Security**” means (a) cash or (b) a Letter of Credit in the amount of \$60/kW of Guaranteed PV Capacity plus \$2,250,000.00.

“**Phase I Performance Assurance**” means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its sole discretion) in the amount of \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity on the Commercial Operation Date, or thereafter in accordance with Section 5(a) of Exhibit B.

“**Phase II Capacity**” means additional Storage Facility capacity of up to 40 MW that Seller expects to add to the Storage Facility after the Commercial Operation Date.

“**Phase II COD Certificate**” has the meaning in Section 2 of Exhibit B.

“**Phase II Commercial Operation**” has the meaning set forth in Section 2 of Exhibit B.

**“Phase II Commercial Operation Date”** means the date Phase II Commercial Operation is achieved.

**“Phase II Commercial Operation Delay Damages”** means an amount equal to (a) the Phase II Development Security amount required hereunder, divided by (b) ninety (90).

**“Phase II Commercial Operation Storage Capacity Test”** means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity and/or initial Efficiency Rate, in connection with the Phase II Commercial Operation Date and conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Phase II Development Security”** means (a) cash or (b) a Letter of Credit in the amount of the Phase II FCDS Award times \$90/kW.

**“Phase II FCDS Award”** means the maximum amount of capacity of the Phase II Capacity awarded FCDS, as evidenced by written confirmation from the CAISO, or evidence of Qualifying Capacity via entry into CAISO’s annual NQC report.

**“Phase II FCDS Finding Date”** means the earliest date of the Phase II FCDS Award.

**“Phase II Guaranteed Commercial Operation Date”** has the meaning on the Cover Sheet.

**“Phase II Performance Security”** means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its sole discretion) in the amount of \$90/kW of additional Installed Storage Capacity added to the Storage Facility as of the Phase II Commercial Operation Date, or thereafter in accordance with Section 5(b) of Exhibit B.

(k) New Sections 2.2(j) and 2.2(k) are added as follows:

(j) The Facility is providing Resource Adequacy Benefits to Buyer for the month in which the Delivery Term commences; and

(k) Seller has delivered to Buyer an officer’s certificate stating the ITC rate which Seller will utilize in financing the Facility.

(l) A new Section 2.5 is added as follows:

2.5 **Phase II Capacity Procurement**. No later than thirty (30) days following the Phase II FCDS Finding Date, Seller shall provide Buyer a copy of a purchase order or other evidence reasonably satisfactory to Buyer that it has procured batteries for the full amount of the Phase II FCDS Award.

(m) A new Section 3.7(d) is added as follows:

(d) **Phase II FCDS**. Seller shall use commercially reasonable efforts to maximize the amount of FCDS awarded to Phase II Capacity. If, despite Seller’s commercially reasonable efforts, FCDS is awarded for less than five (5) MW by May 1, 2024, then the Phase II

Capacity will be deemed cancelled, and neither Party will have any further obligations with respect to the Phase II Capacity.

(n) 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.

(o) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(p) Section 4.5(i) is added, as follows:

(i) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation (as “Commercial Operation” is defined in the CAISO Tariff), (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer’s SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller’s account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer’s account. For the period 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.

(q) 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.

(r) 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.

(s) Section 8.7 is replaced in its entirety with the following:

To secure its obligations under this Agreement, Seller shall deliver (a) the Phase I Development Security to Buyer within thirty (30) days after the Effective Date, and (b) the Phase II Development Security to Buyer within thirty (30) days after the First Amendment Effective Date; *provided*, in the event (x) the Phase II FCDS Award is less than forty (40) MW then, no later than fifteen (15) days after the Phase II FCDS Finding Date, Buyer shall refund or release, as applicable, the Phase II Development Security in amount equal to the product of \$90/kW multiplied by the positive difference, if any, between forty (40) MW and the Phase II FCDS Award, or (y) the Phase II Capacity is cancelled pursuant to Section 3.7, then, no later than fifteen (15) days after the date of such cancellation, Buyer shall refund or release, as applicable, the full amount of the Phase II Development Security. Seller shall maintain the Development Security in full force and effect, but Seller shall not be required to replenish Development Security following a draw. Upon Seller's delivery of the Phase I Performance Security, Buyer shall return the Phase I Development Security to Seller, less the amounts drawn in accordance with this Agreement. If applicable, upon Seller's delivery of the Phase II Performance Security, Buyer shall return the Phase II Development Security to Seller, less the amounts drawn in accordance with this Agreement. Within 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.

(t) A new Section 11.1(c)(viii) is added as follows:

(viii) if the officer's certificate provided pursuant to Section 2.2(k) specifies that Seller will utilize PTC for financing the Generating Facility at a base rate that exceeds \$0.027/MWh and either (A) the Parties are unable to agree to an amended Renewable Rate (which Buyer may accept or reject in its sole discretion) within sixty (60) days of the date of the officer's certificate (as may be extended by mutual agreement of the Parties), or (B) Seller fails to provide a new officer's certificate within such sixty (60) day period certifying that the Generating Facility is being financed using the ITC and the applicable ITC rate.

(u) The first two sentences of Section 11.3(a)(i) are replaced in their entirety by the following:

If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals (A) if the Early Termination Date is prior to the Phase II FCDS Finding Date, the amount of the Phase I Development Security plus, if the Phase I Development Security is posted as cash, any interest accrued thereon, and (B) if the Early Termination Date is after the Phase II FCDS Finding Date, the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Phase I Development Security or Development Security (as applicable) and any interest accrued thereon if posted as cash, and any amount of Phase I Development Security or Development Security (as applicable) that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer.

(v) Exhibit B is replaced in its entirety with a new Exhibit B, attached hereto as Attachment 1.

(w) Section 3 of Exhibit H is replaced in its entirety by the following:

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than twenty-three and seventy-five one hundredths (23.75) MW and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility.

(x) A new Exhibit H-2 is added to the PPA in the form attached hereto as Attachment 2.

(y) Part II.I(1)(i)(a) of Exhibit O is replaced with the following:

(a) twenty-five (25) MW (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B), or the Guaranteed Storage Capacity (in the case of a Phase II Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or

(z) In Part III.B(2) of Exhibit O, add “(as increased on the Phase II Commercial Operation Date to the total Installed Storage Capacity)” immediately after “25 MW”.

(aa) In Section C of Exhibit P, each occurrence of “25 MW” is replace with “Installed Storage Capacity”.

(bb) Exhibit Q is amended by adding the following final sentence to the first paragraph: “The Parties will update these Operating Restrictions as necessary to account for the Phase II Capacity no later than one-hundred eighty (180) days prior to the Expected Phase II Commercial Operation Date.”

3. Development Cure Period Claims. Seller represents and warrants as of the First Amendment Effective Date of this Amendment that neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any claims of Development Cure Period extensions to the GCSD or GCOD or any other relief due to any Force Majeure Events.

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 First Amendment 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.

(f) 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.

(g) 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.

(h) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.

- (i) 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.
- (j) 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.
- (k) 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 First Amendment Effective Date written above.

**“SELLER:”**

**CHALAN CA SOLAR STORAGE, LLC**

By: \_\_\_\_\_

Printed Name: Samir Verstyn

Title: Secretary

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

**ATTACHMENT 1 TO FIRST AMENDMENT**

**EXHIBIT B**

**FACILITY CONSTRUCTION AND COMMERCIAL OPERATION**

**1. Construction of the Facility.**

(a) **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

**2. Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H with respect to the Facility which includes only up to twenty-five (25) MW of the Guaranteed Storage Capacity (the **“COD Certificate”**). **“Phase II Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement with respect to the Phase II Capacity, as applicable, and provided Notice to Buyer substantially in the form of Exhibit H-2 with respect to the Facility which includes the Phase II Capacity (the **“Phase II COD Certificate”**).

- (a) Seller shall cause (i) Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, and (ii) Phase II Commercial Operation to occur by the Phase II Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve (iii) Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date and (iv) Phase II Commercial Operation at least sixty (60) days before the anticipated Phase II Commercial Operation Date.
- (b) Seller may extend (i) the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages, and (ii) the Phase II Guaranteed Commercial Operation Date by paying Phase II Commercial Operation Delay Damages, to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date and/or Phase II Guaranteed Commercial Operation Date, as applicable, in each case not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages and/or Phase II Commercial Operation Delay Damages, as applicable. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date or Phase II Guaranteed Commercial Operation Date, as applicable, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages and/or Phase II Commercial Operation Delay Damages, as applicable, for the number of days of extension to the Guaranteed Commercial Operation Date and/or Phase II Guaranteed Commercial Operation Date, as applicable. 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). If Seller achieves Phase II Commercial Operation prior to the Phase II Guaranteed Commercial Operation Date as extended by the payment of Phase II Commercial Operation Delay Damages, Buyer shall refund to Seller the Phase II Commercial Operation Delay Damages for each day Seller achieves Phase II Commercial Operation prior to the Phase II Guaranteed Commercial Operation Date times the Phase II Commercial Operation Delay Damages, not to exceed the total amount of Phase II 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 Phase I Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be 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 Guaranteed Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required to have been obtained by the start of construction, with respect to the Guaranteed Construction Start Date, or commercial operation, with respect to the Guaranteed Commercial Operation Date, for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, as applicable, 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 Phase II Commercial Operation (unless the Phase II Capacity is cancelled pursuant to this Agreement, in which case 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 (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.
7. **Failure to Achieve Phase II Commercial Operation.** If Seller fails to achieve Phase II Commercial Operation on or before the Phase II Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer shall have the right to retain as liquidated damages and as its sole remedy for such failure, the Phase II Development Security.
8. **Extension of the Phase II Guaranteed Commercial Operation Date.** The Phase II Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “**Phase II 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 all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required to have been obtained by the Phase II Expected Commercial Operation Date, for Seller to own, construct, interconnect, operate or maintain the Phase II Capacity and to permit Seller and the Phase II Capacity to make available and sell Product; or
  - (b) a Force Majeure Event occurs; or
  - (c) the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Phase II Capacity to connect and sell Product at the Delivery Point by the Expected Phase II Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Phase II Development Cure Period shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Phase II Guaranteed Commercial Operation Date by the payment of Phase II Commercial Operation Delay Damages and any Development Cure Period(s) shall not exceed two hundred ten (210) 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.

**ATTACHMENT 2 TO FIRST AMENDMENT**

**EXHIBIT H -2**

**FORM OF PHASE II COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Phase II 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 Phase II Capacity is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. 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 and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility.
3. Authorization to parallel the Facility (including the Phase II Capacity) was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_[DATE]\_\_\_.
4. The Transmission Provider has provided documentation supporting full unrestricted release of the Facility (including the Phase II Capacity) for Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
5. The CAISO has provided notification supporting Commercial Operation of the Facility (including the Phase II Capacity), in accordance with the CAISO Tariff on \_\_\_\_\_[DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT**

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [\_\_\_\_], 2022 (the “**Amendment Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Desert Quartzite, 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 Agreement, dated as of September 3, 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 provided notice of facts or circumstances resulting in 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 (these facts or circumstances, with any other facts or circumstances satisfying the requirements of Article 10 and Section 4 of Exhibit B of the Agreement that Seller is aware of and could notice to Buyer as of the Amendment Effective Date, the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to the Development Cure Period Claims (including for 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 “March 1, 2024” is deleted and replaced with “March 1, 2025”.
  - (b) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “November 1, 2022” is deleted and replaced with “November 1, 2023”.

- (c) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Expected Construction Start Date</b>	████████
<b>Network Upgrades completed</b> (evidenced by delivery of permission to parallel letter from the Transmission Provider)	7/15/2024
<b>Initial Synchronization</b>	7/15/2024
<b>Expected Date of CAISO Commercial Operation</b>	11/15/2024
<b>Expected Commercial Operation Date</b>	2/1/2025

- (d) In the Delivery Term section of the Cover Sheet, the phrase “Fifteen (15) Contract Years” is deleted and replaced with “Twenty (20) Contract Years”.
- (e) The Delivery Term Expected Energy table on the Cover Sheet is amended to add additional rows for Contract Years 16-20 as follows:

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
16	████████
17	████████
18	████████
19	████████

20	[REDACTED]
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- (f) The Guaranteed Efficiency Rate table on the Cover Sheet is amended to add additional rows for Contract Years 16-20 as follows:

Contract Year	Guaranteed Efficiency Rate
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]

- (g) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	\$ [REDACTED] /MWh (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	\$ [REDACTED] /kW-mo. (flat) with no escalation

- (h) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

**Assumed Tax Credit Rates**: As of the Amendment Effective Date, the Parties have assumed for purposes of this Agreement that Seller would qualify for and utilize: (i) an ITC at thirty percent (30%) for the Storage Facility; and (ii) a PTC at \$0.027/kWh for the Generating Facility for the calendar year in which the Generating Facility is “placed in service” for federal income tax purposes (together, the “**Assumed Tax Credit Rates**”).

- (i) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

**Adjustment Date**” means, with respect to the Generating Facility, either (a) if Seller elects to use ITC for the Generating Facility, the date on which the Generating Facility is “placed in service” for federal income tax purposes, or (b) if Seller elects to use PTC for the Generating Facility, the later of (i) the date on which the Generating Facility is “placed in service” for “federal income tax purposes” and (ii) the date on which Seller has substantially completed installation of Generating Facility equipment comprising 95% of the Guaranteed PV Capacity.

**Assumed Tax Credit Rates**” has the meaning set forth on the Cover Sheet.

**Charging Energy**” means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility (including, for the avoidance of doubt, Auxiliary Uses during such charging).

**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*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. 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.

**Deemed Delivered Energy Rate**” has the meaning set forth in Section 4.4(b).

**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 originating from such solar photovoltaic generating facility to the Storage Facility; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

**Grid Charging Effective Date**” means the Amendment Effective Date.

**Property Tax Exclusion**” means the “new construction” exclusion from California real property taxation under California Revenue and Taxation Code Section 73 or a similar Law.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet; *provided*, if the last officer’s certificate provided by Seller pursuant to Section 2.2(l) states that:

(a) Seller will utilize the PTC for the Generating Facility and that the PTC rate stated in such officer’s certificate is higher than Seller’s Assumed Tax Credit Rate for the PTC, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above the Assumed Tax Credit Rate for the PTC, or

(b) Seller will utilize the ITC for the Generating Facility instead of the PTC, then (i) the Renewable Rate shall be increased [REDACTED] and (ii) if the ITC rate stated in such officer’s certificate is higher than [REDACTED] such Renewable Rate [REDACTED] shall be reduced by [REDACTED] by which such stated ITC rate [REDACTED]

**“Storage Rate”** has the meaning set forth on the Cover Sheet; *provided*,

(a) if the officer’s certificate provided by Seller pursuant to Section 2.2(l) states that the ITC rate for the Storage Facility is higher than Seller’s Assumed Tax Credit Rate for ITC, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the new ITC rate is above the Assumed Tax Credit Rate for ITC; and

(b) if at any time during the term of the Agreement, Energy from the CAISO Grid is used as Charging Energy and the use of such Charging Energy (except to the extent caused by Seller) results in Seller losing more than twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by an amount equal to \$ [REDACTED] per kW-month for each such one (1) percent increase in loss greater than twenty-five percent (25%), it being acknowledged and agreed that (i) any such Storage Rate increase shall be applied retroactively (and even after the Agreement may have been terminated) to the extent that the loss of a Property Tax Exclusion is applied retroactively by the applicable taxing Governmental Authority, so that this provision shall survive the termination of the Agreement, (ii) if there has been a Storage Rate increase pursuant to the foregoing provisions of this this paragraph (b), and thereafter the use of energy from the CAISO Grid for Charging Energy is increased (except to the extent caused by Seller) and results in Seller losing additional Property Tax Exclusion, then the Storage Rate shall be increased further in accordance with the foregoing; *provided*, that (1) the cumulative increases to the Storage Rate pursuant to this paragraph (b) shall in no event increase the Storage Rate above \$ [REDACTED] per kW-month, and (2) Seller shall not be entitled to an increase to the Storage Rate under this paragraph due to use of CAISO Grid Energy for Charging Energy during any period following the expiration of the applicable statute of limitations date after which relevant taxing Governmental Authorities may no longer claim any reduction in the Property Tax Exclusion arising out of such use of CAISO Grid Energy during such period, and in no event shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion.

(j) New Section 2.2(l) is added as follows:

(l) Seller has delivered to Buyer an officer's certificate stating:

(i) that, to the current actual knowledge of the officer executing such certificate, Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in a manner that would constitute an Event of Default by Seller under Section 2.3(b); and

(ii) whether Seller will utilize PTC or ITC for the Generating Facility, and the applicable PTC or ITC rate that would apply to the Generating Facility as of the date of such officer's certificate if the Generating Facility were "placed in service" for federal income tax purposes on the Adjustment Date; *provided*, if Seller's prior officer's certificate indicated it will utilize PTC for the Generating Facility, and the United States Internal Revenue Service provides any update to such PTC rate (i.e., to the rate for the calendar year in which the Adjustment Date occurs) after the date of such officer's certificate, Seller shall provide another officer's certificate informing Buyer of such updated PTC rate; *provided further*, that Seller may elect to use ITC (rather than PTC) for the Generating Facility only if (A) Seller in good faith determines, based on input from nationally recognized tax counsel, either that the Generating Facility is ineligible for PTC, or that there is material risk to Seller in qualifying for PTC for the Generating Facility at the same time as qualifying for ITC for the Storage Facility, and (B) Seller has sent written notice to Buyer prior to the Commercial Operation Date reasonably explaining the details of such Seller determination and within thirty (30) days following the date of such notice Buyer has not sent written notice back to Seller electing to terminate this Agreement, which termination right Buyer shall have upon any such ITC election (it being agreed that any such termination shall be no-fault and Buyer shall return to Seller all Development Security); and

(iii) the ITC rate Seller will utilize for the Storage Facility.

(k) 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.

(l) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection

with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(m) Section 4.4(b) is replaced in its entirety with the following:

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders. Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount (such amount, converted to a dollar per MWh basis, the “**Deemed Delivered Energy Rate**”) equal to (i) the amount of Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer’s certificate provided by Seller pursuant to Section 2.2(1)(ii) states that Seller will utilize PTC for the Generating Facility), (ii) (A) the amount of Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986, as amended (the “**Code**”) as in effect for such Buyer Curtailment Period (and taking into account any then-applicable PTC rate increases under Section 45 of the Code), converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(n) Section 4.5(a) is replaced in its entirety with the following:

(a) Charging Generally. Buyer (or its Scheduling Coordinator) shall be responsible for Scheduling all Charging Energy. To the extent such Charging Energy is Scheduled, and 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 to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy is supplied from PV Energy or directly from the CAISO Grid, and that as a result, even where Charging Energy originates as PV Energy, 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 which originated as PV 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.

(o) 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.

(p) 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, the phrase "the Project's output" means all PV 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.

(q) Section 7.1(b) is replaced in its entirety with the following:

(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 Discharging Notices as set forth in the definition of Discharging Notice in this Agreement results 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. Additionally, with respect to such automatic adjustments to Discharging Notices, until the Parties agree on an alternative approach, Buyer shall issue (or cause to be issued) all Discharging Notices in a manner that minimizes the need for any such automatic adjustments and Buyer shall be responsible for all CAISO charges, costs and penalties that result from Seller's compliance with any such automatic adjustment.

(r) In Section 10.4(a), the phrase "one hundred eighty (180)" is replaced by the phrase "one hundred twenty (120)".

(s) 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)".

(t) Section (a) of Exhibit C is replaced in its entirety with the following:

(a) Renewable Rate and Deemed Delivered Energy Rate. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus the Deemed Delivered Energy Rate (if applicable, and if not applicable, the Renewable Rate) for each MWh of Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

(u) In Section 3 of Exhibit H, the following sentence is added to the end thereof: “The Storage Facility is physically capable of receiving Charging Energy that was generated by the Generating Facility, as well as Charging Energy from the CAISO Grid that was not generated by the Generating Facility.”

(v) In Exhibit P, the definitions of “A”, “B” and “Storage Capability” are replaced in their entirety with the following:

“**A**” is the “**Available Effective Storage Capacity**”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters to (considering the conditions of the Storage Facility in total) receive Charging Energy (without double-counting any loss of Energy accounted for in variable B in the equation above) and deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the Effective Storage Capacity.

“**B**” is the “**PV Availability Adjustment Amount**”, which shall be calculated as the amount (if any) by which the (X) Effective Maximum Charging Amount in such Calculation Interval exceeds (Y) the sum of (i) the average rate of PV Energy deliveries in such Calculation Interval (expressed in MW) plus (ii) the average reduction to the rate of PV Energy deliveries in such Calculation Interval (expressed in MW) attributable to the sum of Deemed Delivered Energy and Lost Output in such Calculation Interval; *provided*, if the Storage Facility is (i) subject to a Discharging Notice in a Calculation Interval or (ii) capable of receiving Energy from the CAISO Grid for Charging Energy, “B” shall be deemed to equal zero for such Calculation Interval.

“**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 receive Charging Energy (calculated as the available battery capability (in MWh) to receive Charging Energy in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged to the

Delivery Point (calculated as the available battery capability (in MWh) to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system battery racks in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system battery rack (based on actual operating conditions) that are able to receive Charging Energy and deliver Discharging Energy to the Delivery Point, but Storage Capability shall never exceed the Effective Storage Capacity x four (4) hours.

- (w) In the definition of “Losses” in Section 1.1, the following sentence is added to the end thereof: “In circumstances where Seller is a Non-Defaulting Party and if the officer’s certificate provided by Seller pursuant to Section 2.2(1)(ii) states that Seller will utilize PTC for the Generating Facility, the value of lost PTCs (if any) shall be included as “Losses” and such value shall be considered direct compensable damages, and not indirect or consequential damages.”
- (x) In Section 19.4, the following sentence is added to the end thereof: “Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that: (i) this Agreement is intended to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code, and (ii) neither Buyer nor any related entity operates the Facility for purposes of Section 7701(e)(4)(i) of the Code.”
- (y) The first sentence of Section 4.2(a) is replaced in its entirety with the following:

Title to all PV Energy shall pass and transfer from Seller to Buyer at the Generating Facility Metering Point.
- (z) New paragraphs are added between the first and second paragraphs of Section 11.6 as follows:

If the Agreement is terminated by Buyer prior to the Commercial Operation Date pursuant to Section 2.2(1)(ii)(B), 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 such early termination date if either of the proposed rates applicable the Generating Facility or the Storage Facility is lower than the Renewable Rate or the Storage Rate (respectively) applicable hereunder as of such early termination date associated with the ITC and applicable ITC rate set forth in the officer’s certificate provided by Seller pursuant to Section 2.2(1), unless Seller first complies with the following provisions of this Section. If this Section applies based on the preceding sentence, then:

(a) if Seller proposes to utilize the ITC for financing some or all of the Generating Facility, Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; and

(b) if Seller proposes to utilize the PTC for financing some or all of the Generating Facility, then:

(1) if Seller or its Affiliate, as applicable, demonstrates to Buyer's reasonable satisfaction, that Seller was only able to utilize the PTC (i) after material costs to reconfigure the Facility or enter into or revise project-related agreements, or (ii) under financing terms materially more costly to Seller than were reasonably available to Seller as of the early termination date), then Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; or

(2) if preceding paragraph (1) does not apply, then Seller shall first offer the Product to Buyer at the same prices as would have been applicable under this Agreement prior to its early termination date (for both the Generating Facility and the Storage Facility) if Seller had elected to use PTC (rather than ITC) for the Generating Facility.

If this Section applies as a result of an Agreement termination under 2.2(1)(ii)(B), then upon Seller or Seller's Affiliates providing Buyer with a written offer to sell the Product on the terms and conditions materially similar to the terms and conditions contained in this Agreement (but at the applicable prices described above), if Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, Seller may transact with third parties.

(aa) Section I(E)(1) of Exhibit Q is deleted in its entirety.

3. Development Cure Period Claims. As of the Amendment Effective Date, all contractual rights, obligations, consequences, and disputes arising out of or relating to the Development Cure Period Claims are fully and finally terminated, resolved, and settled in accordance with the terms of this Amendment. For avoidance of doubt, (a) Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted as a consequence of any Development Cure Period Claims, and (b) Buyer acknowledges and agrees that 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 based on facts or circumstances occurring (i) before the Amended Effective Date that Seller was not aware of or could not notice to Buyer and (ii) on and after the Amendment Effective Date unless proximately caused by the events and circumstances giving rise to the Development Cure Period Claims. Seller represents and warrants as of the Amendment Effective Date 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 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.

5. Miscellaneous.

- (f) 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.
- (g) 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.
- (h) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (i) 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.
- (j) 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.
- (k) 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:”**

**DESERT QUARTZITE, LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

## ATTACHMENT 1

### **Development Cure Period Claims**

1. The Anti-Circumvention Investigation initiated March 28, 2022 by the U.S. Department of Commerce, and the claims of resulting Import Restriction Actions and Import Restriction Delays, and their proximately-caused effect on Seller's ability and schedule to obtain photovoltaic modules for the Project.
2. Facts and circumstances relating to the COVID-19 pandemic arising prior to the Amendment Effective Date and their proximately-caused disruptions to global supply chains, including their effect on labor, materials, and equipment.
3. The Russian invasion of Ukraine and its proximately-caused disruption of supply chains and the availability of key commodities, including nickel and lithium carbonate impacting the availability of BESS equipment.



## Staff Report – Agenda Item 8

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Kate Freeman, Financial Strategy & Initiatives Manager  
David McNeil, Chief Financial Officer

**Approved by:** Ted Bardacke, Chief Executive Officer

**Subject:** Board Resolution authorizing execution of an Energy Prepayment Transaction

**Date:** October 6, 2022

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### **RECOMMENDATION**

Adopt Resolution No. 22-10-041 (Attachment 2) approving parameters under which an energy prepayment transaction can be completed; authorizing and/or approving documents or “form of” documents supporting the prepay transaction; and directing California Community Choice Financing Authority (CCCFA) to make payments to service providers for issuance costs from prepay bond proceeds.

### **BACKGROUND**

At the July 7, 2022, Board of Directors meeting, the Board adopted a Resolution selecting CCCFA as the bond issuer for CPA’s potential energy prepayment transaction and authorizing CPA to join the CCCFA as a Founding Member. The Board further approved the selection of Goldman Sachs & Co., LLC and its wholly owned subsidiary, J. Aron & Company, LLC (collectively, GS), as the prepaid supplier for CPA’s potential energy prepayment financing transaction.

CPA joined CCCFA in September 2022. CPA’s CEO currently serves on the CCCFA Board of Directors. CPA’s CFO is a member of CCCFA’s operational “working group”.

In the third quarter of 2022, staff worked with its municipal advisor Municipal Capital Markets (MCM) and two outside law firms Chapman & Cutler (Chapman), and Clean Energy Counsel, to draft and negotiate documents necessary to structure and execute

the prepay financing transaction in concert with CCCFA, bond and tax counsel Orrick, GS and GS's advisors, Nixon Peabody and Sheppard Mullin.

On September 21, 2022, and September 28, 2022, respectively, the Executive and Finance Committees received an update from staff on the prepay transaction and discussed the proposed Board Resolution.

An energy prepayment transaction is expected to save CPA between \$2 million and \$5 million annually in energy procurement costs.

### **REQUESTED ACTION**

The proposed Board Resolution encompasses the following approvals or authorizations relating to the execution of the prepay transaction:

- Defines the parameters under which the prepay transaction can be completed;
- Authorizes staff to execute, or approve for distribution, documents and "form of" documents supporting the prepay transaction; and
- Directs CCCFA to make payments to services providers for issuance costs out of bond proceeds.

The proposed Board Resolution will allow staff to act nimbly when market conditions are advantageous for issuing the prepay bonds.

### **Transaction Parameters**

Through the proposed Board Resolution, CPA defines the parameters which must be satisfied in order to execute the prepay transaction. Those parameters are:

- That the prepay bonds will be limited obligations of CCCFA, not obligations of CPA;
- That the aggregate bond principal will not exceed \$1.3 billion. Proceeds will be applied to make the energy prepayment, to fund reserves as required, and to pay costs of issuance of the Bonds. This defines the upper bound of the size of the prepay transaction and specifies the uses of proceeds. The final size of the transaction will be determined at the initial pricing date of the bonds in response to market conditions;
- That the minimum "Monthly Discount Percentage" shall be at least 5%. This establishes the minimum cost savings to CPA at the initial issuance and reset

dates of the bonds. CPA retains the right to not enter into a prepay transaction or to participate in such transaction in future reset periods if the minimum Monthly Discount Percentage cannot be achieved.

- That CCCFA's total cost of issuance (TCOI) shall not exceed 1% of the amount of bond proceeds.

### **Prepay Documents**

The Resolution authorizes staff to execute, or approve for release, the following documents supporting the prepay transaction:

- Clean Energy Purchase Contract – a 30-year agreement between CPA and CCCFA under which CPA purchases assigned discounted energy from CCCFA;
- Operational Services Agreement – an agreement between CPA and CCCFA permitting CPA to control various actions of CCCFA relating to prepay project operations;
- Form of Limited Assignment Agreement – a “form of” agreement between CPA, PPA Seller(s), and J. Aron governing the assignment of existing and future PPAs into the prepay project;
- Letter Agreement re: Limited Assignment Agreement – an agreement between CPA and J. Aron to use the Form of Limited Assignment Agreement for future PPA assignments into the prepay project;
- PPA Payment Custodial Agreement – an agreement between CPA, CCCFA, J. Aron, Aron Prepay LLC and Custodian that creates a custody account for receipt of payments from J. Aron and CPA to settle monthly PPA Seller invoices; and
- Preliminary Official Statement – a document used for marketing the prepay bonds that describes the bonds and the structure of the prepay project and includes an Appendix providing descriptive, operating, and financial information about CPA to an investor audience.

### **Compensation to Service Providers**

The proposed Resolution directs CCCFA to make payments to service providers for activities required to issue the prepay bonds. Compensation to these providers for bond issuance (the Total Cost of Issuance, or TCOI) will be paid out of bond proceeds (i.e. not from CPA) and shall not exceed 1% of bond proceeds. The service providers and their roles in the issuance of the prepay bonds are:

- **GS** – bond underwriting services
- **Orrick, Herrington & Sutcliffe** – tax and bond counsel services
- **Chapman** – prepay counsel services to CPA
- **MCM** – municipal financial advisory services to CPA; QIR services
- **Moody's** – bond rating services
- **Kestrel Verifiers** – green bond certification
- **National Bank or Trust Company** – trustee and custodial services
- **Trustee's Counsel** – trustee counsel retained by trustee to provide legal services
- **Other parties TBD** – accountancy services and miscellaneous

### **FISCAL IMPACT**

The TCOI will be paid by CCCFA out of bond proceeds and not by CPA. Accordingly, there will be no fiscal impact to CPA's operating expense budget. CPA expects to realize \$2 - \$5 million in annual savings on its energy costs as a result of the prepay transaction.

### **NEXT STEPS**

Following adoption of the Resolution, staff will continue to work with CCCFA, GS and service providers to finalize and execute prepay documents. Prepay documents will be presented to CCCFA for approval at its October Board of Directors meeting. Staff anticipates the prepay transaction will be executed in Q4 2022 following approval by CCCFA's Board of Directors.

### **ATTACHMENTS**

1. Presentation on Proposed Board Action for Prepay Transaction
2. Resolution No. 22-10-041

3. Clean Energy Purchase Contract
4. Operational Services Agreement
5. Form of Limited Assignment Agreement
6. Letter Agreement re: Limited Assignment Agreement
7. PPA Payment Custodial Agreement
8. Preliminary Official Statement



# Item 8: Proposed Clean Energy Prepayment Transaction

October 6, 2022



# Background

- Pursuant to Board direction, staff is in the process of preparing documents to support a renewable energy prepay transaction. The prepay transaction is expected to result in \$2 million - \$5 million of annual savings in energy costs.
- Staff introduced prepayment financings to the Executive and Finance Committees in October 2021 and March 2022 and to the Board in May 2022
- On May 11, 2022, the Board approved contracts with Municipal Capital Markets (MCM) and Chapman and Cutler (C&C) to assist CPA with evaluating potential Bond Issuers and Prepay Suppliers and assist with the structuring and eventual closing of a prepay transaction
- On July 7, 2022, the Board approved the selection of Goldman Sachs Group, Inc. (GS) and its wholly-owned subsidiary J. Aron & Company, LLC (J. Aron) as Prepaid Supplier and authorized CPA to join California Community Choice Financing Authority (CCCFA), to act as the Bond Issuer
- In Q3 2022 Staff worked with MCM and C&C to negotiate and draft prepay documents with GS and CCCFA
- CPA joined CCCFA in September 2022. CPA's CEO currently serves on the CCCFA Board of Directors. CPA's CFO is a member of CCCFA's operational "working group"
- In September-2022, the Executive and Finance Committees received and discussed presentations regarding the proposed Board action needed to support a prepayment transaction

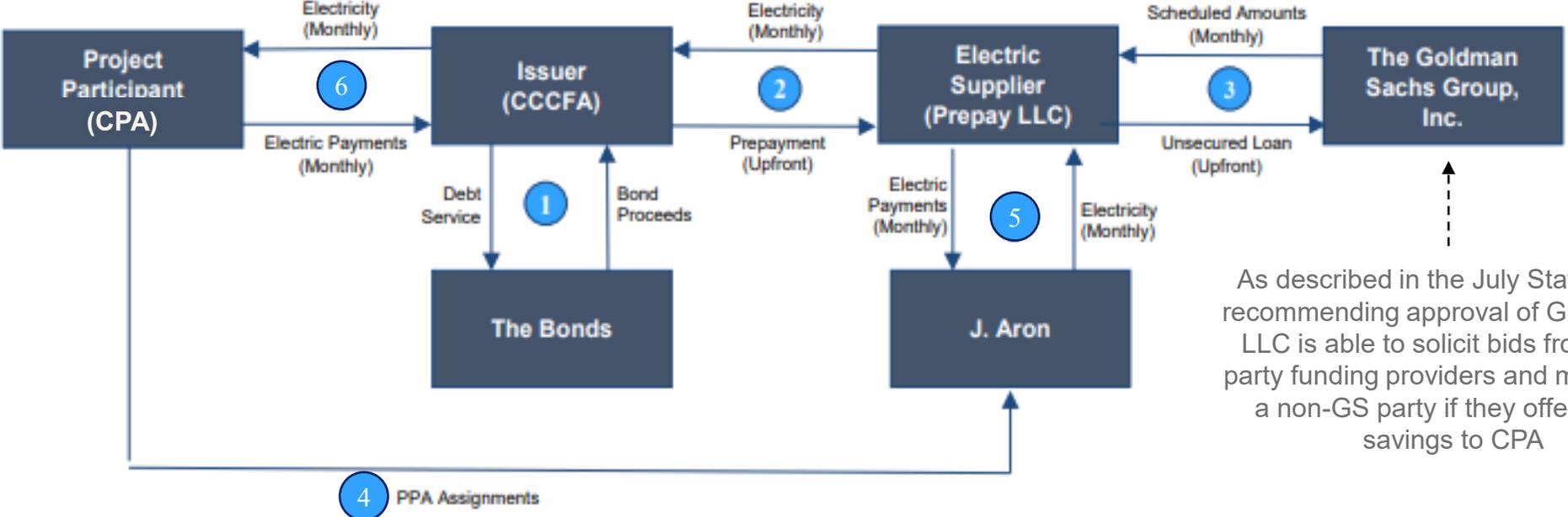


# Summary of the Proposed Board Action

The Proposed Board Resolution encompasses the following approvals or authorizations:

1. Parameters under which the prepay transaction can be completed
  - Bonds will be limited obligations of CCCFA, not obligations of CPA
  - Aggregate bond principal will not exceed \$1.3 billion, and the proceeds will be applied to make the energy prepayment, to fund reserves as required, and to pay bond issuance costs
  - The minimum "Monthly Discount Percentage" (i.e., cost savings) shall be at least 5%
  - CCCFA's total cost of issuance (TCOI) shall not exceed 1% of the amount of bond
2. Documents or document forms (described in more detail on Slide 6)
  - The Limited Assignment Agreements (LAAs) presented for approval is a "form" LAAs rather than an execution version; actual LAAs may be presented to Board at a later date if necessary.
3. Direction to CCCFA to make payments to service providers for issuance costs out of bond proceeds

# Prepayment Transaction Diagram



## Initial Issuance and Cash Flows

1. Debt Issuance – CCCFA issues the prepay bonds
2. Prepayment – CCCFA remits net bond proceeds to Prepay LLC in return for 30 years of assigned electricity deliveries
3. Unsecured Loan – Prepay LLC loans net bond proceeds to GS. GS makes fixed monthly payments to Prepay LLC equal to expected assigned electricity multiplied by the assigned PPA price

## Monthly Cash / Energy Flows

4. Assigned PPAs – CPA assigns certain rights and obligations as a Buyer on existing PPAs to J. Aron; J. Aron makes monthly payments to PPA Sellers for assigned delivered energy
5. Electricity Supply – Prepay LLC enters into a long-term agreement to purchase electricity from J. Aron to match assigned electricity quantities/terms
6. Project Participant – CCCFA sells CPA all assigned electricity delivered by Prepay LLC at the discounted prepay price

# Green Climate Bond Certification

Green Bonds, or Climate Bonds, are a growing sector of the bond market. Bonds certified as “Green” can be purchased by funds specifically set up to finance climate-friendly projects.

If the Board approves the Resolution, CPA will seek a Green Climate Bond certification for the prepay bond issuance utilizing a ratings firm called Kestrel. Kestrel certifies bonds based on the activities financed by the bonds – in this case purchase of renewable energy – rather than the issuer.

## Benefits

- Green bond status may widen the pool of investors interested in subscribing to a bond, allowing for the possibility of better pricing and thus increased savings to CPA
- Green bond status is marked as a positive in market media coverage and aligns with CPA’s mission

## Costs

- GS has estimated a \$30k fee for the green bond certification process; this fee has been included within TCOI and will be paid out of bond proceeds
- Certification may require CPA/CCCFA to provide additional annual disclosures to bondholders (e.g., reporting on renewable energy quantities delivered/purchased)

# Summary of Prepay Documents in Board Resolution

- The Board Resolution authorizes the execution or approval of the following documents:
  1. **Clean Energy Purchase Contract** – Agreement between CPA & CCCFA to purchase assigned discounted electricity
  2. **Operational Services Agreement** – Agreement between CPA and CCCFA permitting CPA to control various actions of CCCFA relating to project operations
  3. **Form of Limited Assignment Agreement** – Form of agreement between CPA, PPA Sellers, and J. Aron governing the assignment of existing and future PPAs
  4. **Letter Agreement re: Limited Assignment Agreement** – CPA and J. Aron agree to use the Form of Limited Assignment Agreement for future PPA assignments
  5. **PPA Payment Custodial Agreement** – Provides for creation of a custody account for receipt of payments from J. Aron and CPA to settle monthly PPA Seller invoices
  6. **Preliminary Official Statement** – Describes the Bonds and includes an Appendix with descriptive, operating, and financial information re: CPA; used for marketing the Bonds

# Prepayment Transaction Timeline: Board & Committees

---

- September 2022**
- Prepay Update to Executive Committee (September 21)
  - Prepay Update to Finance Committee (September 28)
  - Preparation of prepay transaction documents and Resolution of the Board
- 

- October 2022**
- Board (October 6)
    - Present Resolution to authorize prepay transaction parameters and approve prepay documents
- 

- November 2022**
- Board (November 3)
    - Presentation of Limited Assignment Agreements for approval (if necessary)
- 

- Oct – Dec 2022**
- Transaction close

# Questions



# Appendix



# Prepayment Transaction – Entities

- **California Community Choice Financing Authority (CCCFA) (Bond Issuer)**
  - Issues bond; uses bond proceeds to pay Prepay LLC in exchange for a 30-year supply of energy
  - Delivers energy to CPA in exchange for prepay energy payments under the CEPC
  - Pays Bond Investors
- **Goldman Sachs Group, Inc. (Funding Recipient; may be replaced by 3rd party at Initial and/or Reset Dates to achieve better pricing)**
  - Receives term loan from Prepay LLC for amount of bond proceeds
  - Makes monthly payments to Prepay LLC allowing it to meet obligations to J. Aron under the EPSSA
- **J. Aron / Prepay LLC (Prepaid Supplier)**
  - CPA assigns one or more existing PPAs to J. Aron, which assumes the PPA obligations of the “buyer”
  - J. Aron delivers energy to Prepay LLC under the EPSSA; Prepay LLC delivers energy to CCCFA under the MPSA
  - J. Aron makes monthly payments to PPA Seller via Custodial Account for assigned energy
- **CPA (Project Participant / Purchaser)**
  - Makes fixed monthly payments to CCCFA / Bond Trustee for prepaid energy
  - Makes monthly payments to PPA Seller via Custodial Account for non-prepaid energy, unassigned obligations
- **PPA Sellers**
  - Receive monthly cash flows from Custodial Account for energy assigned to J. Aron + non-prepaid energy and unassigned obligations
- **Service Providers**
  - Municipal Financial Advisor, Bond and Tax Counsel, CPA Prepay Legal Counsel, Prepay Bond Underwriters
  - Support the structuring and issuance of a prepay Bond



# Transaction Summary – Prepay Bond Issuance

- A CPA prepay transaction will involve the sale of tax-exempt bonds to bond holders by CCCFA.<sup>(1)</sup>
- CCCFA remits the net bond proceeds to a special purpose entity, Aron Prepay LLC (Prepay LLC), in return for a 30-year supply of electricity pursuant to the Master Power Supply Agreement (MPSA).
  - The creation of Prepay LLC provides transparency and market level savings for the initial period of the prepay (5-10 years) as well as at each subsequent interest rate reset which is estimated to occur each 5-10 years over the bond term. Without Prepay LLC, prepay transaction terminates if GS cannot offer minimum savings at reset.
- Prepay LLC lends the net bond proceeds to Funding Recipient under an unsecured term loan agreement (the Funding Agreement). Funding Recipient makes monthly payments to Prepay LLC sufficient to allow it to meet its payment obligations under the Electricity Purchase Sale & Service Agreement (EPSSA; see below). GS issues a guaranty to back obligations of Prepay LLC under the MPSA.<sup>(2)</sup>
- J. Aron and Prepay LLC enter into the EPSSA under which Prepay LLC purchases electricity + related products from J. Aron for delivery to CCCFA. J. Aron equitizes Prepay LLC through the Subordinated Term Loan Agreement.

(1) CPA does not issue the bonds. Bond proceeds do not flow to CPA or to renewable energy project developers/owners. CPA has no obligation to repay the bonds.

(2) The bonds carry the credit rating of Goldman Sachs Group, Inc.



# Transaction Summary – PPA Assignments and Settlement

- CPA will assign certain rights and obligations under existing PPAs with PPA Sellers to J. Aron via LAAs
- Under the LAAs, the PPA Sellers will deliver assigned renewable energy to J. Aron and J. Aron assumes the obligation to pay the PPA Sellers for the assigned energy
  - Title to the renewable energy passes instantaneously from PPA Seller to J. Aron to Prepay LLC to CCCFA to CPA at the energy delivery point
  - CPA retains other rights and unassigned payment obligations under the PPAs
- CPA and CCCFA enter into the Clean Energy Purchase Contract (CEPC) under which CPA purchases assigned electricity + related products from CCCFA at a discounted price. **This is the source of CPA's savings.** CCCFA uses CPA's payments to service debt owed to bond holders.
  - CPA is responsible for assigning sufficient electricity into the prepay transaction via the LAAs
  - If an LAA terminates or expires, CPA will designate another PPA Seller for the term of the CEPC
- PPA Sellers continue to provide a single monthly invoice for energy and related costs. Monthly payment obligations to the PPA Sellers are split between CPA and J. Aron as follows:
  - J. Aron sells assigned energy to Prepay LLC under the EPSSA, Prepay LLC sells energy to CCCFA under the MPSA, and CCCFA sells energy to CPA under the CEPC
  - J. Aron pays the PPA Seller for assigned energy at the PPA price. CPA pays the PPA Seller for any unassigned obligations under the PPA.
- Settlement of payments are set forth in the PPA Payment Custodial Agreement.

**RESOLUTION NO. 22-10-041**

**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (CLEAN POWER ALLIANCE) AUTHORIZING THE EXECUTION AND DELIVERY OF A CLEAN ENERGY PURCHASE CONTRACT AND CERTAIN OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (CCCFA) CLEAN ENERGY PROJECT REVENUE BONDS; AND CERTAIN OTHER ACTIONS REQUIRED TO ENSURE THE REDUCTION IN THE COSTS OF RENEWABLE ENERGY THEREWITH**

**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**, pursuant to the provisions of the JPA Law, Clean Power Alliance and certain other California community choice aggregators entered into a joint powers agreement (the “Joint Powers Agreement”) pursuant to which the CCCFA (the “Issuer”) was organized for the purpose, among other things, of entering into contracts and issuing

bonds to assist community choice aggregators, including Clean Power Alliance, in financing the acquisition of supplies of clean energy;

**WHEREAS**, the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

**WHEREAS**, Clean Power Alliance has determined that it is desirable to acquire a long-term supply of clean energy from the Issuer;

**WHEREAS**, Clean Power Alliance is requesting the Issuer to agree to purchase certain quantities of clean energy from Aron Energy Prepay 14 LLC, a Delaware limited liability company (“Prepay LLC”) on a prepaid basis (the “Project”) and to sell such clean energy to Clean Power Alliance, as contemplated herein;

**WHEREAS**, Clean Power Alliance is requesting that the Issuer finance the costs of the Project with the proceeds of its clean energy project revenue bonds, with a Series designation determined by the Issuer based on the timing and sequence of issuance (the “Bonds”);

**WHEREAS**, Clean Power Alliance has determined to authorize the representatives of Clean Power Alliance to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale, and delivery of the Bonds; and

**WHEREAS**, there have been submitted to this meeting for approval forms of the following agreements to which Clean Power Alliance is a party (collectively, the “CPA Documents”):

1. Clean Energy Purchase Contract between Clean Power Alliance and the Issuer;
2. Custodial Agreement by and among Clean Power Alliance, J. Aron & Company LLC, a New York limited liability company (“J. Aron”), Prepay LLC, the Issuer, and US Bank Trust Company, NA, who will, as a fiduciary, serve as custodian subsequent to CCCFA Board approval;
3. Form of Limited Assignment Agreement, by and among Clean Power Alliance, the counterparty to the power purchase agreements described therein, and J. Aron;
4. Letter Agreement between Clean Power Alliance and J. Aron regarding matters relating to Limited Assignment Agreements; and
5. Operational Services Agreement relating to the Project, by and between Clean Power Alliance and the Issuer; and;

**WHEREAS**, there have also been submitted to this meeting forms of the following additional documents relating to the Project:

1. Preliminary Official Statement (the “Preliminary Official Statement”), to be used in connection with the offering and sale of the Bonds (together with the CPA Documents, the “Project Documents”);

**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>NAMES</b>	<b>TITLES</b>
Julian Gold	Chair of the Board
Ted Bardacke	Chief Executive Officer
David McNeil	Chief Financial Officer
Matthew Langer	Chief Operating Officer
Nancy Whang	General Counsel

**Section 2. CPA Documents.** The proposed forms of the CPA Documents, attached hereto as Exhibit A, are hereby approved. The form of Limited Assignment Agreement may be used, in a substantially similar form, for assignments of the initial or any additional Clean Power Alliance power purchase agreements, as needed to maintain the transactions approved hereby, and any such Limited Assignment Agreements shall be included in the CPA Documents are hereby approved. Subject to the parameters set forth in Section 5 of this Resolution, either the Chair of the Board, Chief Executive Officer, Chief Operations Officer, the Chief Financial Officer, or the General Counsel (each an “Authorized Representative”) is hereby authorized and directed, for and on behalf of Clean Power Alliance, to execute and deliver the CPA Documents in substantially similar form, with such changes and insertions therein as the Authorized Representatives executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3. Preliminary Official Statement.** The proposed form of the Preliminary Official Statement, attached hereto as Exhibit B, is hereby approved. The form of Preliminary Official Statement may be used, in a substantially similar form, including a reflection of fiscal year 2021-22 financial results, as needed to maintain the transactions approved hereby. Any Authorized Representative is hereby authorized and directed, for and on behalf of Clean Power Alliance, to execute and deliver a certificate as to the information regarding Clean Power Alliance contained therein and in the final version of the Official Statement, with such changes and insertions therein as the Authorized Representative approving the same may deem necessary or appropriate. Subject to approval by the Issuer, Clean Power Alliance hereby authorizes the distribution of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds, and the delivery of the Official Statement in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

**Section 4. Actions Authorized.** The Authorized Representatives, each acting alone, are hereby authorized and directed, for and in the name and on behalf of Clean Power Alliance, to execute and deliver any and all documents, including, without

limitation, any tax certificate relating to its expected use of the energy to be purchased by it from the Project, any continuing disclosure certificate or similar agreement required for the offering or sale of the Bonds, and any and all closing certificates to be executed in connection with the issuance of the Bonds and to take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which Clean Power Alliance has approved in this Resolution, for the issuance, sale and delivery of the Bonds, and to consummate by Clean Power Alliance the transactions contemplated by the Clean Power Alliance. Documents approved hereby and the other Project Documents presented to the Board herewith, including any subsequent amendments, waivers or consents entered into or given under or in accordance with such documents.

**Section 5. Transaction Parameters.** The approvals provided for herein shall be subject to the following parameters:

(a) the Bonds will not be obligations of Clean Power Alliance, but will be limited obligations of the Issuer payable solely from the revenues and other amounts pledged thereto, including amounts payable by Clean Power Alliance under the Clean Energy Purchase Contract;

(b) the aggregate principal amount of the Bonds shall not exceed \$1,300,000,000, and the proceeds of the Bonds shall be applied to make the prepayment due under the Master Power Supply Agreement, fund reserves as required under the Bond Indenture, and pay costs of issuance of the Bonds;

(c) the “Monthly Discount Percentage” as provided for in the Clean Energy Purchase Contract shall be at least 5%; and

(d) CCCFA total cost of issuance including all underwriting, legal and consultant fees will not exceed 1% of the amount of the bond proceeds.

**Section 6.** Execution and delivery of the CPA Documents by an Authorized Representative shall be conclusive evidence that the parameters set forth in Section 5 have been met, and all actions heretofore taken by the Authorized Representatives with respect to the issuance of the Bonds are hereby ratified, confirmed, and approved.

**Section 7.** If Section 5 and Section 6 listed herein have been met, an Authorized Representative may direct CCCFA to make payments to vendors that provided professional services to CPA to complete the CPA Documents and ultimately the issuance of the bonds. These professional services include legal counsel, bond counsel, tax counsel, municipal financial advisor, swap advisor, trustee and trustee counsel, underwriter of the bonds, underwriter’s counsel, and any other vendor required to complete the issuance of the bonds. Payment to these vendors is considered a cost of issuance and will be paid by CCCFA out of the proceeds of the sale of the Bonds.

**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**

**CPA Documents**

(see attached)

**EXHIBIT B**

**Preliminary Official Statement**

(see attached)

CLEAN ENERGY PURCHASE CONTRACT

between

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

and

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

Dated as of [\_\_\_\_], 2022

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Exhibit A-1 — Base Quantities; Base Delivery Point; Commodity Reference Prices

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Exhibit F — Assignment of Assignable Power Contracts

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Exhibit H — Pricing and Other Terms

Exhibit I — Closing Certificate

## CLEAN ENERGY PURCHASE CONTRACT

This Clean Energy Purchase Contract (this “Agreement”) is made and entered into as of [\_\_\_\_], 2022 (the “Execution Date”), by and between California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and Clean Power Alliance of Southern California, a California joint powers authority (“Purchaser”).

### WITNESSETH:

WHEREAS, Issuer has planned and developed a project to acquire long-term supplies of Product from Aron Energy Prepay [ ] LLC, a Delaware limited liability company (“Prepay LLC”) and a wholly-owned subsidiary of The Goldman Sachs Group, Inc., pursuant to a Master Power Supply Agreement, dated as of [\_\_\_\_], 2022 (the “Master Power Supply Agreement”), to meet a portion of the Product supply requirements of Purchaser through a discounted clean energy purchase product (the “Clean Energy Project”);

WHEREAS, Purchaser desires to enter into an agreement with Issuer for the purchase of Product acquired by the Issuer under the Clean Energy Project;

WHEREAS, Issuer will finance its payment for Product under, and the other costs of, the Clean Energy Project by issuing Bonds;

WHEREAS, Purchaser is a joint powers authority and a 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 for the transmission, distribution, sale, and delivery of Product to retail electric consumers within its service area;

WHEREAS, Purchaser is agreeable to purchasing a portion of its Product requirements from Issuer under the terms and conditions set forth in this Agreement and Issuer is agreeable to selling to Purchaser such supplies of Product under the terms and conditions set forth in this Agreement;

WHEREAS, concurrently herewith, Purchaser has assigned to J. Aron (as defined below) certain Assigned Rights and Obligations (as defined below), including the right to receive Assigned Product (as defined below), which Assigned Product will be resold to Prepay LLC under the Electricity Sale and Service Agreement, then resold to Issuer under the Master Power Supply Agreement and then resold to Purchaser hereunder; and

WHEREAS, as a condition precedent to the effectiveness of the Parties' obligations under this Agreement, Issuer shall have entered into the Master Power Supply Agreement and shall have issued the Bonds.

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, Issuer and Purchaser (the "Parties" hereto; each is a "Party") agree as follows:

## ARTICLE I.

### DEFINITIONS

Section 1.1 Defined Terms. The following terms, when used in this Agreement (including the preamble or recitals to this Agreement) and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

"Administrative Fee" means the amount per MWh specified as such in Exhibit H.

"Affiliate" means, with respect to either Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party. For purposes of this definition, "control" of an entity means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors or Persons performing similar functions or (b) direct or cause the direction of the management and policies, whether by contract or otherwise.

"Agreement" has the meaning specified in the preamble and shall include exhibits, recitals and attachments referenced herein and attached hereto.

"Alternate Delivery Point" has the meaning specified in Section 5.1(a).

"Annual Refund" means the annual refund, if any, to be provided to the Purchaser and calculated pursuant to the procedures specified in Section 3.4.

"APC Contract Price" has the meaning specified in Exhibit F.

"APC Party" has the meaning specified in Exhibit F.

"Applicable Project" has the meaning specified in Exhibit F.

"Assignable Power Contract" has the meaning specified in Section 6.1.

"Assigned Delivery Point" means, with respect to any Assigned Energy, the Assigned Delivery Point as set forth in the applicable Assignment Schedule for such Assigned Energy.

“Assigned Discounted Product” means, for any Month, the lesser of (i) the total quantity of Assigned Product (in MWh) delivered hereunder in such Month and (ii) the aggregate Assigned Prepay Quantities for such Month.

“Assigned Energy” means any Energy, including Energy associated with PCC1 Product and Long-Term PCC1 Product, to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“Assigned PAYGO Product” means, for any Month, the amount, if any, by which the total quantity of Assigned Product delivered hereunder in such Month exceeds the aggregate Assigned Discounted Product for such Month.

“Assigned PPA” means any power purchase agreement that is assigned pursuant to an Assignment Agreement in accordance with the terms of this Agreement.

“Assigned Prepay Quantity” has the meaning specified in Exhibit F.

“Assigned Prepay Value” means, for any Month and each Assignment Schedule, the Assigned Prepay Quantity for such Month multiplied by the applicable APC Contract Price.

“Assigned Product” means, as applicable, PCC1 Product, Long-Term PCC1 Product, Assigned Energy, Assigned RECs and any other Product included on an Assignment Schedule, subject to the limitations for such other Product set forth in Exhibit F.

“Assigned Quantity” means, with respect to each Month during an Assignment Period, the quantity of Assigned Energy (in MWh) delivered in connection with the Assigned Product during such Month.

“Assigned RECs” means any RECs associated with PCC1 Product or Long-Term PCC1 Product to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“Assigned Rights and Obligations” has the meaning specified in Section 6.1.

“Assignment Agreement” means, for any Assigned Rights and Obligations, an agreement among Purchaser, J. Aron and the APC Party, approved by Issuer, in the form attached hereto as Annex II to Exhibit F (with such changes thereto as may be mutually agreed upon by Purchaser, J. Aron, the APC Party, and Issuer, each in its sole discretion).

“Assignment Period” for any Assigned Rights and Obligations has the meaning specified in the applicable Assignment Agreement.

“Assignment Schedule” has the meaning specified in Exhibit F.

“Available Discount Percentage” has the meaning specified in the Re-Pricing Agreement. For the avoidance of doubt, the “Available Discount Percentage” under the Re-Pricing

Agreement includes the Monthly Discount Percentage, as well as additional discounting expected to be made available through the Annual Refund.

“Balancing Authority” has the meaning specified in the CAISO Tariff.

“Base Delivery Point” has the meaning specified in Section 5.1(a).

“Base Product” means Firm (LD) Energy delivered to the Base Delivery Point.

“Base Quantity” means, with respect to each Delivery Hour during the Delivery Period, the Base Unadjusted Quantity for such Delivery Hour less the Base Quantity Reduction for such Delivery Hour, each as set forth on Exhibit A-1, as Exhibit A-1 may be revised pursuant to Article VI.

“Base Quantity Reduction” means, with respect to each Delivery Hour during the Delivery Period, the “Base Quantity Reduction” of Base Product (in MWh) set forth for such Delivery Hour on Exhibit A-1, as Exhibit A-1 may be revised pursuant to Article VI.

“Base Unadjusted Quantity” means, with respect to each Delivery Hour during the Delivery Period, the “Base Unadjusted Quantity” (in MWh) set forth for such Delivery Hour on Exhibit A-1.

“Bond Closing Date” means the date on which Bonds are first issued pursuant to the Bond Indenture.

“Bond Indenture” means (i) the Trust Indenture to be entered into prior to the commencement of the Delivery Period between Issuer and the Trustee, and (ii) any trust indenture entered into in connection with the commencement of any Interest Rate Period after the initial Interest Rate Period between Issuer and the Trustee containing substantially the same terms as the indenture described in clause (i) and which is intended to replace the indenture described in clause (i) as of the commencement of such Interest Rate Period.

“Bonds” means the bonds issued pursuant to the Bond Indenture.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a Federal Reserve Bank Holiday, (iii) any other day on which commercial banks generally in either New York, New York or the State of California are authorized or required by Law to close, or (iv) any day excluded from “Business Day” as therein defined, pursuant to the Bond Indenture.

“CAISO” means California Independent System Operator or its successor.

“CAISO Tariff” means CAISO’s FERC-approved tariff, as modified, amended, or supplemented from time to time.

“Calculation Agent” has the meaning specified in the Re-Pricing Agreement.

“California Long-Term Contracting Requirements” means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015 (SB 350), California Public Utilities Code Section 399.13(b), and CPUC Decision 17-06-026 and CPUC Decision 18-05-026, as may be modified by subsequent decision of the California Public Utilities Commission or by other Law.

“CEC” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, and any successor agency thereto.

“Claiming Party” has the meaning specified in Section 11.1.

“Claims” means all claims or actions, threatened or filed, that directly or indirectly relate to the indemnities provided herein, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Clean Energy Project” has the meaning specified in the recitals.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means, with respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a reasonably prudent Person would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and the risk to the Party required to take such action.

“Commodity Reference Price” means either (i) the Day-Ahead Market Price, or (ii) the Real-Time Market Price, as applicable.

“Contract Price” means (i) with respect to the Base Product and any Delivery Hour, (A) the Day-Ahead Market Price for such Delivery Hour at the Base Delivery Point less (B) the product of the Fixed Price multiplied by the Monthly Discount Percentage, (ii) with respect to Assigned Discounted Product, (A) the applicable APC Contract Price(s) multiplied by (B) the result of 100% less the Monthly Discount Percentage, and (iii) with respect to Assigned PAYGO Product, the APC Contract Price(s).

“CPA Custodial Agreement” means that certain Custodial Agreement, dated as of the date hereof, by and among Purchaser, Issuer, J. Aron, Prepay LLC, and the CPA Custodian.

“CPA Custodian” means [\_\_\_\_], a [\_\_\_\_].

“CPA Gross Payment” has the meaning specified in the CPA Custodial Agreement.

“Day” means each period of 24 consecutive Hours commencing at the Hour ending at 01:00 (LPT) through the Hour ending at 24:00 (LPT).

“Day-Ahead Market Price” has the meaning specified on Exhibit A-1 for each Delivery Point.

“Default Rate” means, as of any date of determination, the lesser of (a) the sum of (i) the rate of interest per annum quoted in The Wall Street Journal (Eastern Edition) under the “Money Rates” section as the “Prime Rate” for such date of determination, plus (ii) one percent per annum, or (b) if a lower maximum rate is imposed by applicable Law, such maximum lawful rate.

“Delivery Hour” has the meaning specified in Exhibit A-1.

“Delivery Period” has the meaning specified in Exhibit H.

“Delivery Point” means the Base Delivery Point or an Assigned Delivery Point, as applicable.

“Disqualified Sale Proceeds” has the meaning specified in Section 7.6.

“Disqualified Sale Units” has the meaning specified in Section 7.6.

“Electricity Sale and Service Agreement” has the meaning specified in the Master Power Supply Agreement.

“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 three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“EPS” means California’s Emissions Performance Standards, as set forth in Sections 8340 and 8341 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“EPS Compliant Energy” means Energy that Purchaser can contract for and purchase in compliance with EPS requirements that are applicable to Purchaser.

“EPS Energy Period” means any Assignment Period or J. Aron EPS Energy Period.

“Execution Date” has the meaning specified in the preamble.

“Federal Tax Certificate” means the executed Federal Tax Certificate delivered by Purchaser in the form attached as Exhibit D.

“FERC” means the Federal Energy Regulatory Commission or any successor thereto.

“Firm (LD)” means, with respect to a Party’s obligation to sell and deliver or purchase and receive, that such Party’s liability for the failure to meet such obligation shall only be excused to the extent that, and for the period during which, such performance is prevented by Force Majeure, and that in the absence of Force Majeure, the Party to which performance of such obligation is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article IV.

“Fixed Price” means \$[\_\_\_\_\_] /MWh, which is the fixed price under the Buyer Swap (as defined in the Master Power Supply Agreement).

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date this Agreement was executed, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided; provided that, for the avoidance of doubt, the declaration of “Force Majeure” by an APC Party under a PPA (as defined in an Assignment Agreement) shall constitute Force Majeure hereunder. Force Majeure shall include, provided the criteria in the first sentence are met, riot, insurrection, war, labor dispute, natural disaster, vandalism, terrorism, sabotage. Force Majeure shall not be based on (i) the loss of Purchaser’s markets; (ii) Purchaser’s inability economically to use or resell the Product purchased hereunder; (iii) the delay, loss, or failure of Issuer’s supply; or (iv) Issuer’s ability to sell the Product at a higher price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (x) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the applicable Delivery Point and (y) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. Force Majeure invoked by Prepay LLC under the Master Power Supply Agreement shall constitute Force Majeure in respect of Issuer hereunder to the extent the conditions set forth above have been satisfied with respect to Prepay LLC.

“Government Agency” means the United States of America, any state thereof, any municipality, or any local jurisdiction, or any political subdivision of any of the foregoing, including, but not limited to, courts, administrative bodies, departments, commissions, boards, bureaus, agencies, or instrumentalities.

“Governmental Approval” means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, registration, filing, giving of notice to, decree, declaration of or regulation by any Government Agency relating to the valid execution, delivery or performance of this Agreement or the consummation of any of the transactions contemplated hereby.

“Hour” means the 60-minute period commencing at 00:00 (LPT) on first Day of the Delivery Period and ending at 01:00 (LPT) on the first Day of the Delivery Period, and each 60-minute interval thereafter.

“Initial Assigned Rights and Obligations” means the Assigned Rights and Obligations set forth in Exhibit A-2 hereto as of the date hereof.

“Initial Reset Period” has the meaning specified in Exhibit H.

“Interest Rate Period” has the meaning specified in the Bond Indenture.

“Issuer” has the meaning specified in the preamble.

“Issuer Default” has the meaning specified in Section 17.1.

“ISTs” has the meaning specified in Section 5.1(a).

“J. Aron” means J. Aron & Company LLC, a New York limited liability company, and its permitted successors and assigns under an Assignment Agreement.

“J. Aron EPS Energy Period” has the meaning specified in Section 6.1(c).

“J. Aron Fixed Payment” has the meaning specified in the CPA Custodial Agreement.

“J. Aron Prepay Payment” has the meaning specified in the CPA Custodial Agreement.

“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 December 19, 2008, as amended from time to time, under which Purchaser is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any statute, law, rule or regulation or any written judicial or administrative decision, ruling or interpretation with respect thereto or thereof having the effect of the foregoing enacted, promulgated, or issued by a Government Agency whether in effect as of the Execution Date or at any time during the term of this Agreement.

“Long-Term PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1, and the California Long-Term Contracting Requirements, to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“LPT” means the local prevailing time then in effect in the State of California.

“Mandatory Purchase Date” has the meaning specified in the Bond Indenture.

“Master Power Supply Agreement” has the meaning specified in the recitals.

“Minimum Discount Percentage” has the meaning specified in Exhibit H.

“Month” means a period beginning on the first Day of a calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

“Monthly Discount Percentage” has the meaning specified in Exhibit H.

“Municipal Utility” means any Person that (i) is a “governmental person” as defined in the implementing regulations under Section 141 of the Code and any successor provision, (ii) owns either or both a gas distribution utility or an electric distribution utility (or provides natural gas or electricity at wholesale to, or that is sold to entities that provide natural gas or electricity at wholesale to, governmental Persons that own such utilities), and (iii) agrees in writing to use the gas or electricity purchased by it (or cause such gas or electricity to be used) for a qualifying use as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii).

“MWh” means megawatt-hour.

“Non-Priority Products” means any Products that are not Priority Products.

“Party” has the meaning specified in the preamble.

“PCC1 Product” means bundled renewable energy and RECs meeting the requirements of Portfolio Content Category 1 to be delivered to J. Aron or any successor thereto pursuant to any Assigned Rights and Obligations.

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, or Government Agency.

“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.

“Potential Remarketing Event” has the meaning specified in Section 3.5(b).

“Prepay LLC” has the meaning stated in the recitals.

“Primary Delivery Point” has the meaning specified in Section 5.1(a).

“Priority Products” means the Base Quantity and Assigned Products to be purchased by Purchaser under this Agreement, together with Products that (i) Purchaser is obligated to take under a long-term agreement, which Products either have been purchased by

Purchaser or a joint action agency pursuant to a long-term prepaid power purchase agreement using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes, or (ii) with respect to Energy, Energy that is generated using capacity that was constructed using the proceeds of bonds, notes, or other obligations, the interest on which is excluded from income for federal income tax purposes (provided that, for the avoidance of doubt, Priority Products shall not include Energy that is generated using capacity that was wholly or partially financed through the monetization of renewable tax credits, whether such monetization is accomplished through a tax equity investment or otherwise, or that is generated from federally owned and operated hydroelectric facilities, including through the United States Army Corps of Engineers and the United States Bureau of Reclamation, and marketed by the Bonneville Power Administration or the Western Area Power Administration).

“Product” means Energy and, to the extent included on an Assignment Schedule, associated RECs, capacity or other products related to the foregoing; *provided* that the inclusion of any Product on an Assignment Schedule is subject to the limitation set forth in Exhibit F.

“Purchaser” has the meaning specified in the preamble.

“Purchaser Default” has the meaning specified in Section 17.2.

“Qualifying Use Requirements” means, with respect to any Product delivered under this Agreement, such Product is used (i) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii), (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code, and (iii) in a manner that is consistent with the Federal Tax Certificate attached as Exhibit D.

“Re-Pricing Agreement” means the Re-Pricing Agreement, dated as of the Bond Closing Date (as defined in the Master Power Supply Agreement), by and between Prepay LLC and Issuer.

“Real-Time Market Price” has the meaning specified on Exhibit A-1 for each Delivery Point.

“Remarketing Election Deadline” means, for any Reset Period, the last date and time by which the Purchaser may provide a Remarketing Election Notice as set forth in the applicable Reset Period Notice.

“Remarketing Election Notice” has the meaning specified in Section 3.5(b).

“Renewable Energy Credit” or “REC” has the meaning specified for “Renewable Energy Credit” 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.

“Replacement Assigned Rights and Obligations” means any Assigned Rights and Obligations other than the Initial Assigned Rights and Obligations.

“Replacement Price” means, with respect to any Shortfall Quantity of Base Quantities, the price at which Purchaser, acting in a Commercially Reasonable manner, purchases at the applicable Delivery Point Replacement Product for such Shortfall Quantity, plus (i) costs reasonably incurred by Purchaser in purchasing Replacement Product, and (ii) additional transmission charges, if any, reasonably incurred by Purchaser to the applicable Delivery Point, or at Purchaser’s option, the market price at the Delivery Point for such Product not delivered as determined by Purchaser in a Commercially Reasonable manner. The Replacement Price for any Shortfall Quantity shall not include any administrative or other internal costs incurred by Purchaser and shall be limited to a price that is Commercially Reasonable with respect to the timing and manner of purchase. In no event shall the Replacement Price include any penalties, ratcheted demand or similar charges, nor shall Purchaser be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Issuer’s liability.

“Replacement Product” means any Energy purchased by Purchaser to replace any Shortfall Quantity at the Delivery Point where such Shortfall Quantity occurred; provided that such Energy is purchased for delivery in the Delivery Hour to which such Shortfall Quantity relates.

“Reset Period” means each “Reset Period” under the Re-Pricing Agreement.

“Reset Period Notice” has the meaning specified in Section 3.5(a).

“RPS Law” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the California Public Utilities Code, as implemented and amended from time to time, and any successor Law.

“Schedule”, “Scheduled” or “Scheduling” means the actions of Issuer, Purchaser and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting, and confirming to each other the quantity and type of Product to be delivered during any given portion of the Delivery Period at a specified Delivery Point.

“Shortfall Quantity” has the meaning specified in Section 4.1(a).

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Issuer or Purchaser to or from the Delivery Point.

“Trustee” means [\_\_\_\_], and its successors as trustee under the Bond Indenture.

“Utility Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of Purchaser’s electric system, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, or other moneys derived by the Purchaser from the sale, furnishing and supplying of the electric capacity or energy or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Purchaser’s electric system, (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys to the extent that the use of such earnings and income is limited to Purchaser’s electric system by

or pursuant to law, (3) deferred revenues and moneys maintained in the Purchaser’s operating reserve fund and (4) such other income, charges, revenue or moneys maintained in reserves as the Purchaser may specify in a written order of the Purchaser filed with the Issuer, but excluding (A) in all cases customers’ deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the Purchaser; and (B) such other income, charges, revenue or moneys as the Purchaser may specify in a written order of the Purchaser filed with the Issuer, provided that such written order of the Purchaser confirms that, following the filing of such written order of the Purchaser, (i) the requirements of Section 14.7 shall be satisfied; and (ii) the income, charges, revenue or moneys specified in such written order of the Purchaser shall be accounted for separately from the “Utility Revenues” as defined herein.

“Voided Remarketing Election Notice” has the meaning specified in Section 3.5(b).

“Western EIM” has the meaning ascribed to “Energy Imbalance Market (EIM)” under the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or its successor.

Section 1.2 Definitions; Interpretation. References to “Articles,” “Sections,” “Schedules” and “Exhibits” shall be to Articles, Sections, Schedules, and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest scope of such general statement, term or matter. Except where expressly provided otherwise, any reference herein to any agreement or document includes all amendments, supplements, or restatements to and of such agreement or document as may occur from time to time in accordance with its terms and the terms hereof, and any reference to a party to any such agreement includes all successors and assigns of such party thereunder permitted by the terms hereof and thereof.

## ARTICLE II.

### **DELIVERY PERIOD; NATURE OF CLEAN ENERGY PROJECT; CONDITION PRECEDENT**

Section 2.1 Delivery Period. Subject to Section 2.3, delivery of Product by Issuer to Purchaser shall commence at the beginning of the Delivery Period and, except for any Reset Period for which a Remarketing Election Notice is in effect as provided in Section 3.5(b), shall continue throughout the Delivery Period.

Section 2.2 Nature of Clean Energy Project. Purchaser acknowledges and agrees that Issuer will meet its obligations to provide Product to Purchaser under this Agreement exclusively through its purchase of Product from Prepay LLC pursuant to the Master Power Supply Agreement and that Issuer is financing its purchase of such supplies through the issuance of the Bonds.

Section 2.3 Condition Precedent. Notwithstanding anything to the contrary herein, commencement of deliveries and the rights and obligations of Issuer and Purchaser hereunder are subject to the condition precedent that Issuer shall have entered into the Master Power Supply Agreement and shall have issued the Bonds.

Section 2.4 Pledge of this Agreement. Purchaser acknowledges and agrees that Issuer will pledge its right, title and interest under this Agreement and the revenues to be received under this Agreement to secure Issuer's obligations under the Bond Indenture.

### ARTICLE III.

#### SALE AND PURCHASE; PRICING

Section 3.1 Sale and Purchase of Product. Issuer shall sell and deliver or cause to be delivered to Purchaser, and Purchaser shall purchase and receive from Issuer, the applicable Product in the quantities and at the times and subject to the terms and conditions set forth in this Agreement. The quantities of Product to be sold and purchased and delivered and received pursuant to the terms and conditions set forth in this Agreement shall be equal to (a) the Base Quantity, if any, for each Delivery Hour and (b) the Assigned Quantity delivered to J. Aron in each Month of the Delivery Period pursuant to the Assignment Agreements.

Section 3.2 Purchaser Payments.

(a) For each Month for which an EPS Energy Period is in effect at the start of such Month:

(i) Purchaser shall pay Issuer the Contract Price multiplied by the Assigned Prepay Quantities actually delivered for such Month; and

(ii) Pursuant to the terms of the CPA Custodial Agreement Purchaser shall owe a separate CPA Gross Payment for each Assigned PPA consistent with the terms of the CPA Custodial Agreement, and, upon satisfying its obligations under the CPA Custodial Agreement in respect of such amount (after taking into consideration any PPA Seller Payment Obligation (as such term is defined in the CPA Custodial Agreement) credited to CPA in respect thereof), any portion of such amount attributable to Assigned PAYGO Product shall be deemed to be paid by Purchaser to the applicable APC Party on behalf of J. Aron and shall satisfy the obligations of the respective parties under each of the Electricity Sale and Service Agreement, the Master Power Supply Agreement, this Agreement

and the applicable Assignment Agreement for such Assigned PAYGO Product.

(b) To the extent that Base Quantities are delivered hereunder in any Month, Purchaser shall pay Issuer the Contract Price multiplied by the Base Quantities actually delivered.

(c) The Contract Price for Assigned Energy is inclusive of any amounts due in respect of other Assigned Products.

Section 3.3 Limited Obligation to Take Base Quantities. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not be required to purchase and receive any Base Quantities hereunder, and Issuer, with respect to any Base Quantities that otherwise would be delivered hereunder, shall cause Prepay LLC to remarket such Base Quantities pursuant to the provisions of Exhibit C to the Master Power Supply Agreement.

Section 3.4 Annual Refund. In addition to any Monthly Discount Percentage applied to Energy Scheduled hereunder, Issuer shall credit such Annual Refund to Purchaser as may be available for distribution by Issuer pursuant to Section 5.10 of the Bond Indenture, subject to the provisions of this Section 3.4. Such Annual Refund, if any, shall be credited to the next amount due from Purchaser following the release of funds for such purpose to Issuer under the terms of the Bond Indenture. In determining the amount of such Annual Refund, if any, to be credited to Purchaser, Issuer may reserve such funds (i) as may be required under the terms of the Bond Indenture or (ii) with the prior written consent of Purchaser (a) to fund or maintain the Minimum Discount Percentage for any future Reset Period, (b) to fund or maintain any rate stabilization or working capital reserve, (c) to reserve or account for unfunded liabilities and expenses or (d) for other costs of the Clean Energy Project.

Section 3.5 Reset Period Remarketing.

(a) Reset Period Notice. For each Reset Period, Issuer shall provide to Purchaser, at least ten (10) days prior to the Remarketing Election Deadline, written notice (a “Reset Period Notice”) setting forth (i) the duration of such Reset Period, (ii) the estimated Available Discount Percentage for such Reset Period, and (iii) the applicable Remarketing Election Deadline. Issuer may thereafter update such notice at any time prior to the Remarketing Election Deadline and in any such update may extend the Remarketing Election Deadline in its sole discretion.

(b) Remarketing Election. If the Reset Period Notice (or any update thereto) for any Reset Period indicates that the estimated Available Discount Percentage specified in such notice is not at least equal to the Minimum Discount Percentage for such Reset Period, then: (i) a “Potential Remarketing Event” shall be deemed to exist, and (ii) Purchaser may, not later than the Remarketing Election Deadline, issue a written notice in the form attached hereto as Exhibit C (a “Remarketing Election Notice”) to Issuer, Prepay LLC and the Trustee electing for the Assignment Agreements to be terminated and all Base Quantities with respect to such Reset Period to be remarketed; provided, however, if the actual Available Discount Percentage, as finally determined under the Re-Pricing Agreement, is equal to or greater than the Minimum Discount Percentage,

then Issuer may, in its sole discretion, elect by written notice (a “Voided Remarketing Election Notice”) to Purchaser to treat such Remarketing Election Notice as void. If Purchaser issues a valid Remarketing Election Notice (other than a Voided Remarketing Election Notice) in accordance with this Section 3.5(b) for any Reset Period, then Purchaser shall have no rights or obligations to receive any Product hereunder during such Reset Period or to receive any Annual Refund attributable to such Reset Period.

(c) Final Determination of Available Discount Percentage. The Parties acknowledge and agree that the final Available Discount Percentage for any Reset Period following the Initial Reset Period will be determined on the Re-Pricing Date (as defined in the Re-Pricing Agreement) for such Reset Period, and that such Available Discount Percentage may differ from the estimate or estimates of such Available Discount Percentage last provided to Purchaser prior to the Remarketing Election Deadline for such Reset Period; provided that the Available Discount Percentage for any Reset Period will not be less than the lower of (i) the last estimated Available Discount Percentage set forth in the Reset Period Notice for such Reset Period (or any update thereof) sent to Purchaser by Issuer and (ii) the Minimum Discount Percentage for Reset Period.

(d) Obligations Following a Remarketing Election. Notwithstanding the issuance of any Remarketing Election Notice for a Reset Period, Purchaser shall not make any new commitment to purchase Priority Products during such Reset Period to the extent any such commitment could reasonably be expected to cause, during any portion of the Delivery Period after such Reset Period, Purchaser’s aggregate obligations to purchase Priority Products (including its obligation to purchase Priority Products hereunder) to exceed Purchaser’s expected aggregate requirements for Products that will be used (i) for a “qualifying use” as defined in U.S. Treas. Reg. § 1.148-1(e)(2)(iii) and (ii) in a manner that will not result in any “private business use” within the meaning of Section 141 of the Code. Unless Purchaser issues a new Remarketing Election Notice (other than a Voided Remarketing Election Notice) for any subsequent Reset Period in accordance with this Section 3.5, Purchaser and J. Aron will cooperate in good faith and exercise Commercially Reasonable Efforts to locate EPS Compliant Energy for redelivery hereunder in any such Reset Period.

## ARTICLE IV.

### FAILURE TO SCHEDULE PRODUCT

#### Section 4.1 Issuer’s Failure to Schedule Base Quantity (Not Due to Force Majeure).

(a) Shortfall Quantity. If, for any Delivery Hour during the Delivery Period, Issuer breaches its obligation to Schedule or deliver all or any portion of the Base Quantity, after giving effect to reductions for Assigned Energy at any Delivery Point pursuant to the terms of this Agreement, then the portion of the Base Quantity that Issuer failed to Schedule or deliver shall be a “Shortfall Quantity”.

(b) Issuer Cover Damage Payments. To the extent Purchaser actually purchases Replacement Product with respect to any Shortfall Quantity, then Issuer shall pay to Purchaser the result determined by the following formula:

$$P = Q \times (RP - CP + AF)$$

Where:

- P = The amount payable by Issuer under this Section 4.1(b);
- Q = The quantity of Replacement Product purchased;
- RP = The Replacement Price;
- CP = The Contract Price that would have applied to such Product; and
- AF = The Administrative Fee.

(c) Purchaser Obligation to Mitigate. Purchaser shall exercise Commercially Reasonable Efforts to mitigate Issuer's damages paid by Issuer hereunder.

Section 4.2 Purchaser's Failure to Schedule or Take Base Quantities (Not Due to Force Majeure). If, for any Delivery Hour during the Delivery Period, Purchaser breaches its obligation to Schedule or take all or any portion of the Base Quantity at any Delivery Point pursuant to the terms of this Agreement, then Purchaser shall remain obligated to pay Issuer the Contract Price for such Base Quantity. Issuer shall credit to Purchaser's account any net revenues Issuer may receive from Prepay LLC under the Master Power Supply Agreement in connection with the ultimate sale of any such Product by Prepay LLC to Municipal Utilities or, if necessary, other purchasers, up to the Contract Price.

Section 4.3 Assigned Product. Notwithstanding anything herein to the contrary, neither Purchaser nor Issuer shall have any liability or other obligation to one another for any failure to Schedule, take, or deliver Assigned Product, except as expressly set forth in Article VI; provided that Purchaser shall be obligated to pay the amounts specified in Section 3.2(a)(i) regardless of whether the Assigned Product is delivered.

Section 4.4 Sole Remedies. Except with respect to the termination of this Agreement pursuant to Article XVII, the remedies set forth in this Article IV shall be each Party's sole and exclusive remedies for any failure by the other Party to Schedule, deliver or take Product, as applicable, pursuant to this Agreement.

## ARTICLE V.

### DELIVERY POINTS; SCHEDULING

Section 5.1 Delivery Points.

(a) Base Delivery Points. All Base Product delivered under this Agreement shall be Scheduled for delivery and receipt at (i) the Delivery Point set forth in Exhibit A-1 (the “Primary Delivery Point”) or (ii) any other point (an “Alternate Delivery Point”) that has been mutually agreed by Issuer, Purchaser and Prepay LLC (the Primary Delivery Point or, to the extent specified, any Alternate Delivery Point being the “Base Delivery Point”). Delivery of Energy to Purchaser at the Primary Delivery Point shall be facilitated through submission of Inter-SC Trades, as defined in the CAISO Tariff (“ISTs”). Purchaser shall designate a scheduling coordinator in the CAISO market for this purpose as specified in Exhibit G.

(b) Alternate Base Market Prices. The Day-Ahead Market Price and Real-Time Market Price for each Alternate Delivery Point, as applicable, shall be the price mutually agreed and identified by the Parties, or if no such price is identified for such Alternate Delivery Point, the Day-Ahead Market Price, and Real-Time Market Price, as applicable, specified on Exhibit A-1 for the Primary Delivery Point from which quantities are being shifted to such Alternate Delivery Point.

(c) Assigned Energy Delivery Points. Assigned Energy delivered under this Agreement shall be Scheduled for delivery and receipt at the applicable Assigned Delivery Point specified in the applicable Assignment Schedule. All other Assigned Product shall be delivered consistent with the terms of the applicable Assignment Agreement

Section 5.2 Transmission and Scheduling. Issuer shall Schedule or arrange for Scheduling services with CAISO in accordance with the CAISO Tariff, to deliver the Base Product to the Base Delivery Point. Purchaser shall Schedule or arrange for Scheduling services with CAISO in accordance with CAISO Tariff, to receive the Base Product at the Base Delivery Point. If Prepay LLC Schedules or arranges for Scheduling services, to deliver Base Product to the Base Delivery Point, then Issuer’s obligations under this Section shall be relieved pro tanto. Scheduling of Assigned Energy shall be in accordance with the applicable Assignment Schedule.

Section 5.3 Title and Risk of Loss. Title to and risk of loss of the Product delivered under this Agreement shall pass from Issuer to Purchaser at the applicable Delivery Point. The transfer of title and risk of loss for all Assigned Product shall be in accordance with the applicable Assignment Agreement; provided that all Assignment Agreements shall provide for the transfer of Renewable Energy Credits in accordance with WREGIS. Subject to Section 18.1, each Party shall indemnify, defend and hold harmless the other Party from and against any Claims made by a third party arising from or out of any event, circumstance, act or incident related to the Product delivered hereunder first occurring or existing during the period when control and title to Base Product or Assigned Product is vested in the indemnifying Party as provided in this Section; provided that, notwithstanding the foregoing, (a) Issuer shall have no obligations to indemnify, defend or hold harmless Purchaser for any such Claims relating to replacement costs, cover damages or similar liabilities that are payable to any Person because of Purchaser’s failure to deliver any Product to such Person and (b) no obligation to indemnify, defend or hold harmless shall supplant or control the provisions of this Agreement relating to Force Majeure. Notwithstanding anything to the

contrary herein, no Party shall have any obligations to indemnify, defend or hold harmless the other Party in respect of any Claims relating to any Assigned Product.

Section 5.4 PCC1 Product and Long-Term PCC1 Product. Notwithstanding any other provision of this Agreement to the contrary, to the extent that any Assigned Product is PCC1 Product or Long-Term PCC1 Product, the following provisions apply:

(a) Eligibility. 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. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]**.

(b) Transfer of Renewable Energy Credits. 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. **[STC REC-1, Non-modifiable. D.11-01-025]**.

(c) Tracking of RECs in WREGIS. 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. **[STC REC-2, Non-modifiable. D.11-01-025]**. With respect to Sections 5.4(a) through (c), “Seller” means “Issuer”, Buyer means “Purchaser”, and any other capitalized terms not otherwise defined therein shall have the meaning specified in the Assigned PPA.

(d) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. **[STC 17, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(e) Issuer Representations and Warranties.

Issuer represents and warrants:

- (i) Issuer has the right to sell the Assigned Product from the Applicable Project;
- (ii) Issuer has not sold the Assigned Product or any REC or other attributes of the Assigned Product to be transferred to Purchaser to any other person or entity;
- (iii) the Energy component of the Assigned Product produced by the Applicable Project and purchased by Issuer for resale to Purchaser hereunder is not being sold by Issuer back to the Applicable Project or APC Party;
- (iv) Assigned Product to be purchased and sold pursuant to this Agreement has not been committed to another party;
- (v) The Assigned Product is free and clear of all liens or other encumbrances;
- (vi) Issuer will deliver to Purchaser all Assigned Energy and associated RECs generated by the Applicable Project for Long-Term PCC1 Product in compliance with the California Long-Term Contracting Requirements, if applicable;
- (vii) The Assigned Product supplied to Purchaser under this Agreement that is Long-Term PCC1 Product will be sourced solely from Applicable Projects that have an Assignment Period of ten years or more in length, or otherwise in compliance with the California Long Term Contracting Requirements; and
- (viii) Issuer will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1) or, if applicable, or compliance with the California Long-Term Contracting Requirements.

Issuer further represents and warrants to Purchaser that, to the extent that the Product sold by Issuer is a resale of part or all of a contract between Issuer and one or more third parties, Issuer represents, warrants and covenants that the resale complies with the following conditions in (i) through (iv) below during the Assignment Period and throughout the generation period:

- (i) The original upstream third-party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1);
- (ii) This Agreement transfers only electricity and RECs that have not yet been generated prior to the Assignment Period;

- (iii) The electricity transferred by this Agreement is transferred to Purchaser in real time; and
- (iv) If the Applicable Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

(f) Subsequent Changes in Law. In the event that the qualifications or requirements of the RPS program, PCC1 Product or the California Long-Term Contracting Requirements change, Issuer shall take commercially reasonable actions to meet the amended qualifications or requirements of the RPS Law, PCC1 Product or the California Long-Term Contracting Requirements but will not be required to incur any unreimbursed costs to comply with the RPS Law, PCC1 or the California Long-Term Contracting Requirements, collectively.

(g) Limitations. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree as follows:

(i) Issuer has relied exclusively upon the representations and warranties of each respective APC Party set forth in the Assigned PPAs in making the representations and warranties set forth in this Section 5.4 and has not performed any independent investigation with respect thereto;

(ii) J. Aron has agreed pursuant to the Electricity Sale and Service Agreement to terminate the applicable Assignment Period in the event that any representation or warranty in this Section 5.4 proves to be incorrect in any respect; and

(iii) Purchaser agrees that its sole recourse for any breach of the provisions of this Section 5.4 shall be the termination of the applicable Assignment Period and Purchaser shall have no other recourse against Issuer or remedies under this Agreement.

Section 5.5 Communications Protocol. With respect to the Scheduling and delivery of Base Quantities, Issuer and Purchaser shall comply with the communications protocol set forth in Exhibit G. Scheduling and transmission of Assigned Energy shall be in accordance with the applicable Assignment Agreement pursuant to which the Project Participant shall act as scheduling agent for each of J. Aron, Prepay LLC, and Issuer.

Section 5.6 Deliveries within CAISO or another Balancing Authority. The Parties acknowledge that Energy delivered by Issuer at a Delivery Point within CAISO or another Balancing Authority (including a Balancing Authority operating within the Western EIM) will be delivered in accordance with the CAISO Tariff and rules of the Balancing Authority as applicable. Scheduling such Energy in accordance with the requirements of the applicable Product into the

applicable Balancing Authority shall constitute delivery of such Product to Purchaser hereunder, provided that any associated Renewable Energy Credits and other Assigned Product are also delivered to Purchaser.

Section 5.7 Assigned Products. Notwithstanding anything to the contrary herein, except as provided in Section 6.3, Issuer shall have no liability under this Article V with respect to any Assigned Products.

## ARTICLE VI.

### ASSIGNMENT OF POWER PURCHASE AGREEMENTS

#### Section 6.1 Assignments Generally.

(a) Initial Assigned Rights and Obligations. Prior to the commencement of the Delivery Period, Purchaser agrees to exercise Commercially Reasonable Efforts to assign the Initial Assigned Rights and Obligations to J. Aron.

(b) Assignments of Replacement Assigned Rights and Obligations. Commencing (i) one year prior to the expiration of any EPS Energy Period or (ii) otherwise immediately upon the early termination or anticipated early termination of a EPS Energy Period or a failure to assign any portion of the Initial Assigned Rights and Obligations, Purchaser shall exercise Commercially Reasonable Efforts and cooperate with J. Aron in good faith to assign a portion of Purchaser's rights and obligations (the "Assigned Rights and Obligations") under one or more power purchase agreements (each such agreement, an "Assignable Power Contract") pursuant to which Purchaser is purchasing EPS Compliant Energy, RECs and other products that may be assigned pursuant to Exhibit F. The Parties recognize that, in the case of such an assignment, J. Aron will be obligated to sell and deliver Assigned Product it receives under all Assigned Rights and Obligations to Prepay LLC under the terms of the Electricity Sale and Service Agreement and Prepay LLC will be obligated to deliver such Product to Issuer under the terms of the Master Power Supply Agreement. To be effective hereunder, any assignment of Replacement Assigned Rights and Obligations must be proposed, agreed, and consented to in accordance with Exhibit F and the Master Power Supply Agreement.

(c) J. Aron Procurement of EPS Compliant Energy. Under certain circumstances specified in Section 6.1(c) of the Electricity Sale and Service Agreement, J. Aron is obligated to exercise Commercially Reasonable Efforts to obtain EPS Compliant Energy for ultimate redelivery to Purchaser hereunder, and, in such case, Purchaser shall cooperate in good faith with J. Aron in connection therewith, provided that:

(i) J. Aron's procurement of any such EPS Compliant Energy for ultimate redelivery hereunder shall be subject to Purchaser's prior

written consent, with such consent not to be unreasonably withheld, provided, for the avoidance of doubt, that it shall be reasonable for Purchaser to withhold its consent based on the requirements of the EPS or other regulatory requirements;

(ii) Issuer and Purchaser shall act in good faith and in a Commercially Reasonable manner to negotiate appropriate amendments to this Agreement to facilitate the delivery of such EPS Compliant Energy, including with respect to the Delivery Point, consequences of failing to deliver or receive and scheduling matters;

(iii) the period of delivery for any such EPS Compliant Energy (any such period, a “J. Aron EPS Energy Period”) shall not exceed the length, as applicable, of (A) the then-current Reset Period if such EPS Compliant Energy is obtained for delivery for the remainder of a Reset Period and (B) the length of the next succeeding Reset Period if such EPS Compliant Energy is obtained for delivery commencing in such succeeding Reset Period; and

(iv) during a J. Aron EPS Energy Period, if requested by J. Aron, Purchaser shall continue to exercise Commercially Reasonable Efforts and cooperate with J. Aron in good faith to assign Assigned Rights and Obligations to J. Aron under an Assignable Power Contract.

(d) Amendments. Purchaser and Issuer agree to seek the written consent of J. Aron prior to any amendment to this Article VI or Exhibit F hereto.

Section 6.2 Failure to Obtain EPS Compliant Energy. To the extent an EPS Energy Period terminates or expires and Purchaser and J. Aron have been unable to obtain EPS Compliant Energy for delivery hereunder pursuant to the provisions of Section 6.1, then, until EPS Compliant Energy is obtained for delivery hereunder, Prepay LLC shall remarket Purchaser’s Base Quantities pursuant to the provisions of Exhibit C to the Master Power Supply Agreement, subject to the following:

(a) Purchaser’s and J. Aron’s obligations set forth in Section 6.1 shall continue to apply; and

(b) Purchaser shall not make any new commitment to purchase Priority Products during such a remarketing.

Section 6.3 Adjustments to Base Quantities. The Base Quantity Reductions set forth on Exhibit A-1 hereto have been calculated to reflect the Initial Assigned Rights and Obligations using the same methodology that would apply to determine such Base Quantity Reductions in connection with the assignment of any Replacement Assigned Rights and Obligations as provided in Exhibit F hereto. Effective upon the first day of the Month following the termination or expiration of an EPS Energy Period for any reason, Issuer shall revise Exhibit A-1 to (i) update

the Base Quantity Reductions as provided in Exhibit F to the extent a subsequent EPS Energy Period will commence immediately following such termination or expiration or (ii) reverse such Base Quantity Reductions associated with the EPS Energy Period that terminated or expired for all remaining Hours in the Delivery Period to the extent a replacement EPS Energy Period will not commence immediately following such termination or expiration. In the case of any other commencement of a subsequent EPS Energy Period, Issuer shall revise the Base Quantity Reductions in Exhibit A-1 as provided by Exhibit F hereto.

Section 6.4 J. Aron Non-Payment to APC Party. To the extent that (a) J. Aron fails to pay when due any J. Aron Prepay Payment and (b) Purchaser makes a payment for such amounts to the applicable APC Party, Purchaser shall provide notice thereof to Issuer upon Purchaser's payment to the applicable APC Party and Issuer shall make a payment to Purchaser in the amount of such non-payment.

## ARTICLE VII.

### USE OF PRODUCT

Section 7.1 Tax Exempt Status of the Bonds. Purchaser acknowledges that the Bonds will be issued with the intention that the interest thereon will be exempt from federal taxes under Section 103 of the Code. Accordingly, Purchaser agrees that it will (a) provide such information with respect to its community choice aggregation program as may be requested by Issuer in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as Issuer may provide from time to time in order to maintain the tax-exempt status of the Bonds. Purchaser further agrees that it will not at any time take any action, or fail to take any action, that, if taken or omitted, respectively, would adversely affect the tax-exempt status of the Bonds.

Section 7.2 Priority Products. Purchaser agrees to purchase and receive the Base Quantities and Assigned Quantities to be delivered under this Agreement (a) in priority over and in preference to all other Products available to Purchaser that are not Priority Products; and (b) on at least a pari passu and non-discriminatory basis with other Priority Products.

Section 7.3 Assistance with Sales to Third Parties. If (a) a quantity of Assigned Energy less than the Assigned Prepay Quantity is delivered hereunder in any Month during an Assignment Period for any reason other than Force Majeure or (b) notwithstanding Purchaser's compliance with Section 7.1, Purchaser does not require all or any portion of the Base Quantities or Assigned Energy to meet its requirements for Energy that it is obligated to purchase under this Agreement as a result of (i) insufficient demand by Purchaser's retail customers or (ii) a change in Law, Purchaser may, with reasonable notice issued in the form of a remarketing notice in accordance with Exhibit G, request (and, in the case of clause (a), shall be deemed to request) that Prepay LLC, as permitted by the Master Power Supply Agreement, sell such portion of such Base Quantities or Assigned Energy (i) to another Municipal Utility, or (ii) if necessary, to another purchaser. Any remarketing notice issued under clause (ii) above shall constitute a Structural Remarketing Notice (as defined in the Master Power Supply Agreement) and shall be subject to the requirements set forth in the Master Power Supply Agreement. If Prepay LLC makes such a

sale under Exhibit C to the Master Power Supply Agreement, Issuer shall credit against the amount owed by Purchaser to Issuer hereunder the amount received by Issuer from Prepay LLC for such sales less all reasonable costs and expenses directly incurred by Issuer, including but not limited to remarketing administrative charges paid by it to Prepay LLC under the Master Power Supply Agreement, but in no event shall the amount of such credit be more than the Contract Price for the Energy so sold.

Section 7.4 Qualifying Use. Without limiting Purchaser's other obligations under this Article VII, Purchaser agrees that, subject to Section 7.5, it will use all of the Product purchased under this Agreement in compliance with the Qualifying Use Requirements. Purchaser agrees that it will provide such additional information, records and certificates as Issuer may reasonably request to confirm Purchaser's compliance with this Section 7.4.

Section 7.5 Remediation.

(a) The Parties acknowledge that Purchaser may at times inadvertently remarket Products received hereunder in a manner that does not comply with Qualifying Use Requirements due to daily and hourly fluctuations in Purchaser's Product needs. To the extent Purchaser does so, Purchaser shall (a) exercise Commercially Reasonable Efforts to use any Disqualified Sale Proceeds of such remarketing to purchase Products (other than Priority Products) that Purchaser then uses in compliance with the Qualifying Use Requirements and (b) reserve funds in an amount equal to any Disqualified Sale Proceeds until such Disqualified Sale Proceeds are remediated or transferred to the Trustee pursuant to Section 7.6(b) below.

(b) To the extent that all or a portion of the Contract Quantity is remarketed under Section 3.3 or under Section 7.3 and any such remarketing results in a Ledger Entry (as defined in the Master Power Supply Agreement), Purchaser agrees that it shall (i) exercise Commercially Reasonable Efforts to use an amount equivalent to the remarketing proceeds associated with such any such Ledger Entry to purchase Non-Priority Products and use such Non-Priority Products in compliance with the Qualifying Use Requirements in order to remediate such Ledger Entries; and (ii) apply its purchases of Non-Priority Products to remediate any such proceeds under the Master Power Supply Agreement prior to remediating such proceeds under any other contract that provides for the purchase of Priority Products. To track compliance with Purchaser's obligations under this Section 7.5(b), Purchaser shall deliver a remediation certificate to Issuer and Prepay LLC by the tenth day of the Month subsequent to any relevant Non-Priority Products purchases (which may include purchases of Energy from CAISO to the extent such Energy is used in compliance with the Qualifying Use Requirements). For Ledger Entries remediated under this Section 7.5(b) that have not otherwise been remediated by Prepay LLC pursuant to the remarketing provisions of the Master Power Supply Agreement, Issuer shall pay Purchaser any portion of the Monthly Discount Percentage associated with such Ledger Entries that is available under the

Bond Indenture on or before the last Business Day of the Month in which Purchaser provides a certificate under this Section 7.5(b) evidencing such remediation.

**Section 7.6 Remediation; Ledger Entries; Redemption.**

(a) Remediation. To track compliance with the requirements of Section 7.5(a), Purchaser will provide a quarterly report to Issuer (delivered not later than the 15<sup>th</sup> day of each April, July, October and January until the end of the Delivery Period) showing the following: the total quantity of proceeds from sales of Products received hereunder that (i) were sold by Purchaser to any Person in a transaction that does not comply with the Qualifying Use Requirements and (ii) have not been remediated by Purchaser by applying such proceeds to purchase Products that are used in compliance with the Qualifying Use Requirements (the quantities of Product producing such proceeds, "Disqualified Sale Units" and such proceeds received, "Disqualified Sale Proceeds").

(b) Ledger Entries. Issuer shall report such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units to Prepay LLC for addition to the remarketing ledgers maintained by Prepay LLC under the Master Power Supply Agreement, with the ledger entries to be dated as of the end of the first month of the relevant quarter.

(c) Transfers to Trustee. Purchaser shall transfer (to the extent such unremediated Disqualified Sales Proceeds and associated Disqualified Sale Units remain reflected on the remarketing ledger described under Section 7.6(b) at the time such transfer is required by this Section 7.6(c)) any such unremediated Disqualified Sale Proceeds and any other required funds (i.e., all additional funds necessary for redemption of the Bonds referred to in this Section 7.6(c)) to the Trustee at least 95 days prior to the second anniversary of the date on which such unremediated Disqualified Sale Proceeds and the associated Disqualified Sale Units were first reflected on the remarketing ledgers in accordance with Section 7.6(b), with such funds to be deposited in the Debt Service Account (as defined in the Bond Indenture) and applied to the redemption of Bonds as directed by Issuer and approved by Special Tax Counsel (as defined in the Bond Indenture) as preserving the tax-exempt status of the Bonds.

**ARTICLE VIII.**

**REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS**

Section 8.1 Representations and Warranties of Issuer. As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Execution Date as follows:

(a) in the case of Issuer as the representing Party, Issuer is a joint powers authority, duly organized and validly existing under the Laws of the State of California;

(b) in the case of Purchaser as the representing Party, Purchaser is a public agency of the State of California, duly organized and validly existing under the Laws of the State of California;

(c) it has all requisite power and authority, corporate or otherwise, to own its material properties, carry on its material business as now being conducted, enter into, deliver and to perform its obligations under this Agreement and to carry out the terms and conditions hereof and the transactions contemplated hereby;

(d) there is no litigation, action, suit, proceeding with service of process accomplished with respect to such Party or investigation pending or, to the best of such Party's knowledge, threatened, in each case before or by any Government Agency and, in each case, which could reasonably be anticipated to materially and adversely affect such Party's ability to perform its obligations under this Agreement or that questions the validity, binding effect or enforceability hereof, any action taken or to be taken by such Party pursuant hereto, or any of the transactions contemplated hereby;

(e) the execution, delivery and performance of this Agreement by such Party have been duly authorized by all necessary action on the part of such Party and its governing body and do not require any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party;

(f) this Agreement has been duly executed and delivered on behalf of such Party by an appropriate officer or authorized Person of such Party and constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms, as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights generally and by general principles of equity;

(g) the execution, delivery and performance of this Agreement by such Party shall not violate any provision of any Law, order, writ, judgment, decree or other legal or regulatory determination applicable to it;

(h) the execution, delivery and performance by such Party of this Agreement, and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its financial obligations under this Agreement, shall not result in any violation of any term of any material contract or agreement applicable to it, or any of its charter or bylaws or of any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, Law, ordinance, rule or regulation applicable to it or any of its properties or to any obligations incurred by it or by which it or any of its properties or obligations are bound or affected, or of any determination or award of any arbitrator applicable to it, and shall not conflict with, or cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets, except with respect to Issuer, the lien of the Bond Indenture;

(i) to the best of the knowledge and belief of such Party, no Governmental Approval is required in connection with the valid authorization, execution, delivery and performance by such Party of this Agreement or the consummation of any of the transactions contemplated hereby other than those Governmental Approvals that have been obtained; and

(j) it enters this Agreement as a bona-fide, arms-length transaction involving the mutual exchange of consideration and, once executed by both Parties, considers this Agreement a legally enforceable contract.

Section 8.2 Warranty of Title. Issuer warrants that it will deliver to Purchaser (a) all Base Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point, and (b) all Assigned Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person that are imposed on such Assigned Product solely as a result of Issuer's or Prepay LLC's actions.

Section 8.3 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES EXPRESSLY MADE BY ISSUER IN THIS Article VIII, ISSUER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Section 8.4 Continuing Disclosure. Purchaser agrees to provide to Issuer: (a) such financial and operating information as may be requested by Issuer, including Purchaser's most recent audited financial statements, for use in Issuer's offering documents for the Bonds; and (b) annual updates to such information and statements to enable Issuer to comply with its undertakings to enable the underwriters of the offerings of the Bonds to comply with the continuing disclosure provisions of Rule 15(c)2-12 of the United States Securities and Exchange Commission. Failure by Purchaser to comply with its agreement to provide such annual updates shall not be a default under this Agreement, but any such failure shall entitle Issuer or an owner of the Bonds to take such actions and to initiate such proceedings as may be necessary and appropriate to cause Purchaser to comply with such agreement, including without limitation the remedies of mandamus and specific performance.

## **ARTICLE IX.**

### **TAXES**

As between Issuer and Purchaser, Issuer shall (i) be responsible for and pay or cause to be paid all ad valorem, excise, severance, production, and other taxes assessed with respect to Product (other than any Assigned Product) delivered pursuant to this Agreement arising prior to the applicable Delivery Point and (ii) indemnify Purchaser and its Affiliates for any such taxes paid by Purchaser or its Affiliates. As between Issuer and Purchaser, Purchaser shall (i) be responsible for all taxes with respect to Product received pursuant to this Agreement assessed at or from the applicable Delivery Point, and (ii) indemnify Issuer and its Affiliates for any such taxes paid by Issuer or its Affiliates. Nothing shall obligate or cause a Party to pay or be liable for any tax for which it is exempt under Law.

## **ARTICLE X.**

### **JURISDICTION; WAIVER OF JURY TRIAL**

Section 10.1 Consent to Jurisdiction. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST EITHER PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT EXCLUSIVELY IN (A) THE COURTS OF THE STATE OF CALIFORNIA LOCATED IN THE CITY OF LOS ANGELES, (B) THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA SITTING IN THE COUNTY OF LOS ANGELES. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH ARTICLE XVI; AND AGREES THAT SERVICE AS PROVIDED ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

Section 10.2 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. 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. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.2 AND EXECUTED BY EACH OF THE PARTIES), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY A COURT.

## **ARTICLE XI.**

### **FORCE MAJEURE**

Section 11.1 Applicability of Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due

or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. For the duration of the Claiming Party's non-performance (and only for such period), the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 11.2 Settlement of Labor Disputes. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance, and the failure of a Party to settle such strikes, lockouts or other industrial disturbances shall not prevent the existence of Force Majeure or of reasonable dispatch to remedy the same.

## **ARTICLE XII.**

### **GOVERNMENTAL RULES AND REGULATIONS**

Section 12.1 Compliance with Laws. This Agreement shall be subject to all present and future Laws of any Government Agency having jurisdiction over this Agreement or the transactions to be undertaken hereunder, and neither Party has knowingly undertaken or will knowingly undertake or knowingly cause to be undertaken any activity that would conflict with such Laws; provided, however, that nothing herein shall be construed to restrict or limit either Party's right to object to or contest any such Law, or its application to this Agreement or the transactions undertaken hereunder, and neither acquiescence therein or compliance therewith for any period of time shall be construed as a waiver of such right.

Section 12.2 Contests. Excluding all matters involving a contractual dispute between the Parties, no Party shall contest, cause to be contested or in any way actively support the contest of the equity, fairness, reasonableness or lawfulness of any terms or conditions set forth or established pursuant to this Agreement, as those terms or conditions may be at issue before any Government Agency in any proceeding, if the successful result of such contest would be to preclude or excuse the performance by either Party of this Agreement or any provision hereunder.

Section 12.3 Defense of Agreement. Excluding all matters involving a contractual dispute between the Parties, each Party shall hereafter exercise Commercially Reasonable Efforts to defend and support this Agreement before any Government Agency in any proceeding, if the substance, validity or enforceability of all or any part of this Agreement is hereafter directly challenged or if any proposed changes in regulatory practices or procedures would have the effect of making this Agreement invalid or unenforceable or would subject either Party to any greater or different regulation or jurisdiction that materially affects the rights or obligations of the Parties under this Agreement.

## **ARTICLE XIII.**

### **ASSIGNMENT**

The terms and provisions of this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns, and legal representatives; *provided*, however, that, subject to Section 18.14, neither Party may assign this Agreement or its rights and interests, in whole or in part, under this Agreement without the prior written consent of the other Party; *provided* furthermore that, for the avoidance of doubt, any applicable Assignment Agreement shall terminate concurrent with the assignment of this Agreement. Prior to assigning this Agreement, Purchaser shall deliver to Issuer written confirmation from each Rating Agency (as defined in the Bond Indenture) then rating the Bonds, *provided* that such agency has rated and continues to rate the Bonds, that the assignment will not result in a reduction, qualification, or withdrawal of the then-current ratings assigned by such Rating Agency to the Bonds. Whenever an assignment or a transfer of a Party's interest in this Agreement is requested to be made with the written consent of the other Party, the assigning or transferring Party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring Party. Upon the agreement of a Party to any such assignment or transfer, the assigning or transferring Party shall furnish or cause to be furnished to the other Party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

## ARTICLE XIV.

### PAYMENTS

#### Section 14.1 Monthly Statements.

(a) Purchaser's Statements. No later than the 5<sup>th</sup> day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period, Purchaser shall deliver to Issuer a statement (a "Purchaser's Statement") listing (i) in respect of the prior Month, if Base Quantities were required to be delivered in such Month and there is a Shortfall Quantity for such Month, the Replacement Price applicable to such Shortfall Quantity, and (ii) any other amounts due to Purchaser in connection with this Agreement with respect to prior Months.

(b) Billing Statements.

(i) No later than the [ ] day of each Month during the Delivery Period (excluding the first Month of the Delivery Period) and the first Month following the end of the Delivery Period (the "Billing Date"), Issuer shall deliver a statement (a "Billing Statement") to Purchaser indicating (i) the total amount due to Issuer for Product delivered in the prior Month, (ii) any other amounts due to Issuer or Purchaser in connection with this Agreement with respect to the prior Months, and (iii) the net amount due to Issuer or Purchaser; provided that Prepay LLC's delivery of a Billing Statement to Issuer and Purchaser pursuant to and as defined in the Master Power Supply Agreement shall be deemed to satisfy Issuer's obligation to deliver a Billing Statement hereunder; provided furthermore that invoicing for all Assigned PAYGO Products shall occur under the CPA Custodial Agreement.

(ii) If a Monthly Statement (as defined in the CPA Custodial Agreement) for an Assigned PPA has not been delivered by the [ ] day of the Month following deliveries, Issuer shall provisionally prepare or cause to be prepared a Billing Statement for this Agreement that assumes all of the Assigned Prepay Quantities were delivered under the applicable Assigned PPA for such Month. In such case, to the extent that a Monthly Statement subsequently delivered under the CPA Custodial Agreement reflects that less than the Assigned Prepay Quantities were actually delivered under any such Assigned PPA, then (A) the previously delivered Billing Statement shall be deemed to be updated in accordance with such Monthly Statement, (B) Prepay LLC shall be deemed under the remarketing provisions of the Master Power Supply Agreement to remarket and purchase such undelivered portion of the Assigned Prepay Quantities for its own account resulting in a Ledger Entry (as defined in the Master Power Supply Agreement) and (C) Issuer shall owe a resettlement payment to Purchaser in an amount equal to the product of (x) the applicable APC Contract Price multiplied by (y) the portion of the Assigned Prepay Quantities (in MWhs) not delivered in such Month. The Parties acknowledge and agree that J. Aron shall have a separate resettlement payment obligation with respect to the amounts described in the clause (C) of the preceding sentence under the Electricity Sale and Service Agreement, and J. Aron's payment of the [J. Aron Resettlement Payment] as defined in and pursuant to the CPA Custodial Agreement shall satisfy the corresponding obligations of the respective parties under each of the Electricity Sale and Service Agreement, the Master Power Supply Agreement and this Agreement.

(c) Supporting Documentation. Upon request by either Party, the other Party shall deliver such supporting documentation of the foregoing statements and information described in this Section 14.1 as such requesting Party may reasonably request.

#### Section 14.2 Payments.

(a) Payments Due. If the Billing Statement indicates an amount due from Purchaser, then Purchaser shall remit such amount to Issuer by wire transfer (pursuant to the Trustee's instructions), in immediately available funds, on or before the later of (i) the 23<sup>rd</sup> day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10<sup>th</sup> day following Purchaser's receipt of Issuer's Billing Statement, or if either such day is not a Business Day, the preceding Business Day. If the Billing Statement indicates an amount due from Issuer, then Issuer shall remit such amount to Purchaser by wire transfer (pursuant to Purchaser's instructions), in immediately available funds, on or before the later of (i) the 28<sup>th</sup> day of the Month following the most recent Month to which such Billing Statement relates, or (ii) the 10<sup>th</sup> day following Issuer's receipt of Purchaser's Statement, or if either such day is not a Business Day, the following Business Day. Notwithstanding the foregoing, payments due from Purchaser for Assigned PAYGO Product shall be satisfied by Purchaser's compliance with Section 3.2(a)(ii) in respect of such Assigned PAYGO Product.

(b) No Duty to Estimate. If Purchaser fails to issue a Purchaser's Statement with respect to any Month, Issuer shall not be required to estimate any amounts due to Purchaser

for such Month, provided that Purchaser may include any such amount on subsequent Purchaser's Statements issued within the next sixty (60) days. The sixty (60)-day deadline in this subsection (b) replaces the two (2) year deadline in Section 14.5 with respect to any claim by any non-delivering Party of inaccuracy in any estimated invoice issued or payment made pursuant to this subsection (b).

Section 14.3 Payment of Disputed Amounts. If Purchaser disputes any amounts included in a Billing Statement, Purchaser shall (except in the case of manifest error) nonetheless pay any amount required by the Billing Statement in accordance with Section 14.2 without regard to any right of set-off, counterclaim, recoupment or other defenses to payment that Purchaser may have; *provided, however*, that Purchaser shall have the right, after payment, to dispute any amounts included in a Billing Statement or otherwise used to calculate payments due under this Agreement pursuant to Section 14.5. If Issuer disputes any amounts included in the Purchaser's Statement, Issuer may withhold payment to the extent of the disputed amount; *provided, however*, that interest shall be due at the Default Rate for any withheld amount later found to have been properly due.

Section 14.4 Late Payment. If Purchaser fails to remit within one Business Day the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at the Default Rate.

Section 14.5 Audit; Adjustments.

(a) Right to Audit. A Party shall have the right, at its own expense, upon reasonable notice to the other Party and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party to the extent reasonably necessary, but only to such extent, to verify the accuracy of any statement, charge, payment, or computation made under this Agreement. This right to examine, audit, and obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement.

(b) Deadline for Objections. Each Purchaser's Statement and each Billing Statement shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such Purchaser's Statement or Billing Statement is objected to in writing, with adequate explanation and/or documentation, within two (2) years after the applicable Month of Product delivery.

(c) Payment of Adjustments. All retroactive adjustments shall be paid in full by the Party owing payment within 30 days of notice and substantiation of such inaccuracy. If the Parties are unable to agree upon any retroactive adjustments requested by either Party within the time period specified in Section 14.5(b), then either Party may pursue any remedies available with respect to such adjustments at law or in equity. Retroactive adjustments for payments made based on an incorrect Purchaser's Statement or Billing Statement shall bear interest at the Default Rate from the date such payment was made.

Section 14.6 Netting; No Set-Off. The Parties shall net all amounts due and owing, including any past due amounts (which, for the avoidance of doubt, shall include any accrued

interest), arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this Article XIV. Notwithstanding the foregoing, no Party shall be entitled to net any amounts that are in dispute and payment for all amounts set forth in a Billing Statement provided to Purchaser shall be made without set-off or counterclaim of any kind.

Section 14.7 Rate Covenant. Purchaser agrees to make payments it is required to make under this Agreement from Utility Revenues, and only from such Utility Revenues, and as a charge against such Utility Revenues, as an operating expense of its electric system and a cost of purchased Product; provided, however, that Purchaser, in its discretion, may apply any legally available moneys to the payment of amounts due under this Agreement. Purchaser hereby covenants and agrees that it will establish, maintain, and set rates and charges for its electric system so as to provide Utility Revenues sufficient, together with all available electric system revenues, to enable Purchaser to pay to Issuer all amounts payable under this Agreement and to pay all other amounts payable from the revenues of Purchaser's electric system, and to maintain any reserves as required by the Purchaser's reserve policy. Purchaser further covenants and agrees that it shall not furnish or supply electric services free of charge to any person, firm, corporation, association, or other entity, public or private, except any such service free of charge that Purchaser is supplying on the date hereof or such free service as required by order of the CPUC or the State of California, and that it shall promptly enforce the payment of any and all accounts owing to Purchaser for the sale of electricity or the provision of transmission, distribution or other services to its customers. Purchaser further covenants and agrees that in any future bond issue, certificate of participation issue, interest rate swap agreement, commodity swap agreement or any other financing or financial transaction undertaken by, or on behalf of, Purchaser in connection with its electric system, Purchaser shall not pledge or encumber the Utility Revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under this Agreement.

## ARTICLE XV.

[RESERVED]

## ARTICLE XVI.

### NOTICES

Any notice, demand, statement, or request required or authorized by this Agreement to be given by one Party to the other Party (or to any third party) shall be in writing and shall either be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit B for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit B. The Parties may mutually agree in writing at any time to deliver notices, demands, or requests through alternate or additional methods, such as electronic mail. Notwithstanding the foregoing, either Party may at

any time notify the other that any notice, demand, statement, or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

## **ARTICLE XVII.**

### **DEFAULT; REMEDIES; TERMINATION**

Section 17.1 Issuer Default. Each of the following events shall constitute a “Issuer Default” under this Agreement:

(a) any representation or warranty made by Issuer in this Agreement shall prove to have been incorrect in any material respect when made; or

(b) Issuer shall have failed to perform, observe, or comply with any covenant, agreement or term contained in this Agreement, and such failure continues for more than thirty (30) days following receipt by Issuer of written notice thereof.

Section 17.2 Purchaser Default. Each of the following events shall constitute a “Purchaser Default” under this Agreement:

(a) Purchaser fails to pay when due any amounts owed to Issuer pursuant to this Agreement and such failure continues for three Days following receipt by Purchaser of written notice thereof;

(b) Purchaser (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained, in each case within 30 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its of assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in

clauses (i) through (vii); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

(c) any representation or warranty made by Purchaser in this Agreement proves to have been incorrect in any material respect when made, and such default is not remedied within thirty (30) days after receipt by Purchaser of written notice thereof;

(d) Purchaser shall have failed to perform, observe or comply with any material covenant, agreement or term contained in this Agreement, and such failure continues for more than 30 days following the earlier of receipt by Purchaser of notice thereof; or

(e) Purchaser shall have failed to establish, maintain, or collect rates or charges adequate to provide Utility Revenues sufficient to enable Purchaser to pay all amounts due to Issuer under this Agreement in accordance with Section 14.7 (Rate Covenant), and such failure continues for more than 30 days following the earlier of receipt by Purchaser of notice thereof.

### Section 17.3 Remedies Upon Default.

(a) Termination. If at any time a Issuer Default or a Purchaser Default has occurred and is continuing, then the non-defaulting Party may do any or all of the following (i) by notice to the defaulting Party specifying the relevant Issuer Default or Purchaser Default, as applicable, terminate this Agreement effective as of a day not earlier than the day such notice is deemed given under Article XVI and/or (ii) declare all amounts due to the non-defaulting Party under this Agreement or any part thereof immediately due and payable, and the same shall thereupon become immediately due and payable, without notice, demand, presentment, notice of dishonor, notice of intent to demand, protest or other formalities of any kind, all of which are hereby expressly waived by the defaulting Party; *provided, however*, this Agreement shall automatically terminate and all amounts due to the non-defaulting Party hereunder shall immediately become due and payable as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition giving rise to a Purchaser Default specified in Section 17.2(b)(iv) or, to the extent analogous thereto, Section 17.2(b)(viii). In addition, during the existence of an Issuer Default or a Purchaser Default, as applicable, the non-defaulting Party may exercise all other rights and remedies available to it at Law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of this Agreement.

(b) Additional Remedies. In addition to the remedies set forth in Section 17.3(a) (and without limiting any other provisions of this Agreement), during the existence of any Purchaser Default, Issuer may suspend its performance hereunder and discontinue the supply of all or any portion of the Product otherwise to be delivered to Purchaser by it under this Agreement. If Issuer exercises its right to suspend performance under this Section 17.3(b), Purchaser shall remain fully liable for payment of all amounts in default and shall not be relieved of any of its payment obligations under this Agreement. Deliveries of Product may only be reinstated, at a time to be determined by Issuer, upon (i) payment in full by Purchaser of all amounts then due and payable under this Agreement and (ii) unless otherwise agreed by Issuer, payment in advance by Purchaser at the beginning of each Month of amounts estimated by Issuer to be due to Issuer for the future

delivery of Product under this Agreement for such Month. Issuer may continue to require payment in advance from Purchaser after the reinstatement of Issuer's supply services under this Agreement for such period of time as Issuer in its sole discretion may determine is appropriate. In addition, and without limiting any other provisions of or remedies available under this Agreement, if Purchaser fails to accept from Issuer any Product tendered for delivery under this Agreement, Issuer shall have the right to sell such Product to third parties on any terms that Issuer, in its sole discretion, determines are appropriate.

(c) Effect of Early Termination. As of the effectiveness of any termination date in accordance with clause (i) of Section 17.3(a), (i) the Delivery Period shall end, (ii) the obligation of Issuer to make any further sales and deliveries of Product to Purchaser under this Agreement shall terminate, and (iii) the obligation of Purchaser to purchase and receive deliveries of Product from Issuer under this Agreement will terminate. Neither this Agreement nor the Delivery Period may be terminated for any reason except as specified in this Article XVII. Without prejudice to any payment obligation in respect of periods prior to termination, no payments will be due from either Party in respect of periods occurring after the effective termination date of this Agreement.

Section 17.4 Termination of Master Power Supply Agreement. Purchaser acknowledges and agrees that (i) in the event the Master Power Supply Agreement terminates prior to the end of the primary term of this Agreement, this Agreement shall terminate on the effective date of early termination of the Master Power Supply Agreement (which date shall be the last date upon which deliveries are required thereunder, subject to all winding up arrangements), (ii) Issuer's obligation to deliver Product under this Agreement shall terminate upon the termination of deliveries of Product to Issuer under the Master Power Supply Agreement and (iii) Purchaser shall exercise its right to terminate any Assignment Agreements in effect. Issuer shall provide notice to Purchaser of any early termination date of the Master Power Supply Agreement. The Parties recognize and agree that, in the event that the Master Power Supply Agreement terminates because of a Failed Remarketing (as defined in the Bond Indenture) of the Bonds that occurs in the first Month of a Reset Period, Issuer shall deliver Product under this Agreement for the remainder of such first Month, and, notwithstanding anything in this Agreement to the contrary, no Monthly Discount Percentage or Annual Refunds shall be associated with such deliveries and the Contract Price shall be adjusted accordingly.

Section 17.5 Limitation on Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN 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. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE. 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 WITHOUT LIMITATION THE NEGLIGENCE OF EITHER PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IN DETERMINING THE APPROPRIATE MEASURE OF DAMAGES THAT WOULD MAKE THE PARTIES WHOLE, THE PARTIES HAVE THOROUGHLY CONSIDERED, INTER ALIA, THE UNCERTAINTY OF FLUCTUATIONS IN PRODUCT PRICES, THE ABILITY AND INTENTION OF THE PARTIES TO HEDGE SUCH FLUCTUATIONS, THE BARGAINED-FOR ALLOCATION OF RISK, THE KNOWLEDGE, SOPHISTICATION AND EQUAL BARGAINING POWER OF THE PARTIES, THE ARMS-LENGTH NATURE OF THE NEGOTIATIONS, THE SPECIAL CIRCUMSTANCES OF THIS TRANSACTION, THE ACCOUNTING AND TAX TREATMENT OF THE TRANSACTION BY THE PARTIES, AND THE ENTERING INTO OF OTHER TRANSACTIONS IN RELIANCE ON THE ENFORCEABILITY OF THE LIQUIDATED DAMAGES PROVISIONS CONTAINED HEREIN.

#### **ARTICLE XVIII. MISCELLANEOUS**

Section 18.1 Indemnification Procedure. With respect to each indemnification included in this Agreement, the indemnity is given to the fullest extent permitted by applicable Law and the following provisions shall be applicable. The indemnified Party shall promptly notify the indemnifying Party in writing of any Claim and the indemnifying Party shall have the right to assume its investigation and defense, including employment of counsel, and shall be obligated to pay related court costs, attorneys' fees and experts' fees and to post any appeals bonds; *provided*, however, that the indemnified Party shall have the right to employ at its expense separate counsel and participate in the defense of any Claim. The indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. In order to prevent double recovery, the indemnified Party shall reimburse the indemnifying Party for payments or costs incurred in respect of an indemnity with the proceeds of any judgment, insurance, bond, surety or other recovery made by the indemnified Party with respect to a covered event.

Section 18.2 Deliveries. Contemporaneously with this Agreement (unless otherwise specified),

(a) each Party shall deliver to the other Party evidence reasonably satisfactory to it of (i) such Party's authority to execute, deliver and perform its obligations under this Agreement and (ii) the appropriate individuals who are authorized to sign this Agreement on behalf of such Party;

(b) on the Bond Closing Date, Purchaser shall deliver to Issuer a fully executed Federal Tax Certificate in substantially the form attached hereto as Exhibit D;

(c) on the Bond Closing Date, Purchaser shall deliver to Issuer an opinion or opinions of counsel to Purchaser covering the matters set forth in the form attached hereto as Exhibit E; and

(d) on the Bond Closing Date, Purchaser shall deliver to Issuer a Closing Certificate in substantially the form set forth hereto as Exhibit I.

Section 18.3 Entirety; Amendments. This Agreement, including the exhibits and attachments hereto, constitutes the entire agreement between the Parties and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those expressed herein. Except for any matters that, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification, supplement, or change hereto shall be enforceable unless reduced to writing and executed by both Parties.

Section 18.4 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLE THAT WOULD DIRECT THE APPLICATION OF ANOTHER JURISDICTION'S LAW.

Section 18.5 Non-Waiver. No waiver of any breach of any of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach or breaches shall be deemed a waiver of any other subsequent breach.

Section 18.6 Severability. If any provision of this Agreement, or the application thereof, shall for any reason be invalid or unenforceable, then to the extent of such invalidity or unenforceability, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent permissible under applicable Law, so long as the economic and legal substance of the transactions contemplated hereby is not affected in any materially adverse manner as to either Party.

Section 18.7 Exhibits. Any and all Exhibits and attachments referenced in this Agreement are hereby incorporated herein by reference and shall be deemed to be an integral part hereof.

Section 18.8 Winding Up Arrangements. All indemnity and confidentiality obligations, audit rights, and other provisions specifically providing for survival shall survive the expiration or termination of this Agreement. The expiration or termination of this Agreement shall not relieve either Party of (a) any unfulfilled obligation or undischarged liability of such Party on the date of such termination or (b) the consequences of any breach or default of any warranty or covenant contained in this Agreement. All obligations and liabilities described in the preceding sentence of

this Section 18.8, and applicable provisions of this Agreement creating or relating to such obligations and liabilities, shall survive such expiration or termination.

Section 18.9 Relationship of Parties. The Parties shall not be deemed to be in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

Section 18.10 Immunity. Each Party represents and covenants to and agrees with the other Party that it is not entitled to and shall not assert the defense of sovereign immunity with respect to its obligations or any Claims under this Agreement.

Section 18.11 Rates and Indices. If the source of any publication used to determine the index or other price used in the Contract Price should cease to publish the relevant prices or should cease to be published entirely, an alternative index or other price will be used based on the determinations made by Issuer and Prepay LLC under Section 18.11 of the Master Power Supply Agreement. Issuer shall provide Purchaser the opportunity to provide its recommendations and other input to Issuer for Issuer's use in the process for selecting such alternative index or other price under Section 18.11 of the Master Power Supply Agreement.

Section 18.12 Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of Issuer payable solely from Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 18.13 Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

Section 18.14 Third Party Beneficiaries; Rights of Trustee. Purchaser acknowledges and agrees that (a) Issuer will pledge and assign its rights, title and interest in this Agreement and the amounts payable by Purchaser under this Agreement to secure Issuer's obligations under the Bond Indenture, (b) the Trustee shall be a third-party beneficiary of this Agreement with the right to enforce Issuer's rights and Purchaser's obligations under this Agreement, (c) J. Aron shall be a

third-party beneficiary of this Agreement with the right to enforce the provisions of Article VI and Exhibit F of this Agreement, (d) the Trustee or any receiver appointed under the Bond Indenture shall have the right to perform all obligations of Issuer under this Agreement, and (e) in the event of any Purchaser Default under Section 17.2(a), (i) Prepay LLC may, to the extent provided for in, and in accordance with, the Receivables Purchase Exhibit to the Master Power Supply Agreement, take assignment from Issuer of receivables owed by Purchaser to Issuer under this Agreement, and Prepay LLC or any third party transferee who purchases and takes assignment of such receivables from Prepay LLC shall thereafter have all rights of collection with respect to such receivables (provided that, if at any time an insurance provider agrees to insure Purchaser's payment obligations hereunder, then such insurance provider shall have the same rights under this Section 18.14 as Prepay LLC), and (ii) if such receivables are not so assigned, the Swap Counterparty or Swap Counterparties (as defined in the Bond Indenture) shall have the right to pursue collection of such receivables to the extent any non-payment by Issuer to any Swap Counterparty was caused by Purchaser's payment default. Pursuant to the terms of the Bond Indenture, Issuer has irrevocably appointed the Trustee as its agent to issue notices and, as directed under the Bond Indenture, to take any other actions that Issuer is required or permitted to take under this Agreement. Purchaser may rely on notices or other actions taken by Issuer or the Trustee and Purchaser has the right to exclusively rely on any notices delivered by the Trustee, regardless of any conflicting notices that it may receive from Issuer.

Section 18.15 No Recourse to Members of Purchaser. Purchaser 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. Purchaser shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Issuer shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Purchaser's constituent members, or the employees, directors, officers, consultants or advisors or Purchaser or its constituent members, in connection with this Agreement.

Section 18.16 Waiver of Defenses. Each Party waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available to it with regard to its obligations pursuant to the terms of this Agreement.

Section 18.17 Rate Changes.

(a) Standard of Review. Absent the agreement of the Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in Section 18.17(b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" 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) and clarified by Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008).

(b) Waiver. In addition, and notwithstanding Section 18.17(a), to the fullest extent permitted by applicable Law, each Party, for itself and its successors and assigns, hereby

expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Section 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable Law or market conditions that may occur. In the event it were to be determined that applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 18.17(b) shall not apply, *provided* that, consistent with Section 18.17(a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 18.17(a).

IN WITNESS WHEREOF, the Parties have caused this Clean Energy Purchase Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

*[Separate Signature Page(s) Attached]*

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CLEAN POWER ALLIANCE OF SOUTHERN  
CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to the Clean Energy Purchase Contract

**EXHIBIT A-1**  
**BASE QUANTITIES; BASE DELIVERY POINTS; COMMODITY REFERENCE PRICES**

[To be attached.]

**EXHIBIT A-2  
INITIAL ASSIGNED RIGHTS AND OBLIGATIONS**

[To be attached.]

**EXHIBIT B**

**NOTICES**

**IF TO ISSUER:** California Community Choice Financing Authority  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Email: [\_\_\_\_\_]

**IF TO PURCHASER:** Clean Power Alliance of Southern California  
801 South Grand Avenue, Suite 400  
Los Angeles, CA 90017  
Email: [\_\_\_\_\_]

**EXHIBIT C**

**REMARKETING ELECTION NOTICE**

California Community Choice Financing Authority  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Email: seriesanotices@cccfa.org

Aron Energy Prepay [ ] LLC  
c/o J. Aron & Company LLC  
200 West Street  
New York, NY 10282

[Trustee]  
[ ]  
[ ]  
Attention: [ ]  
Email: [ ]

To the Addressees:

The undersigned, duly authorized representative of [ ] (the "Purchaser"), is providing this notice (the "Remarketing Election Notice") pursuant to the Clean Energy Purchase Contract, dated as of [ ], 2022 (the "Clean Energy Purchase Contract"), between California Community Choice Financing Authority and Purchaser. Capitalized terms used herein shall have the meanings set forth in the Clean Energy Purchase Contract.

Pursuant to Section 3.5(b) of the Clean Energy Purchase Contract, the Purchaser has elected to have its Base Quantity, for each Hour of the Reset Period commencing \_\_\_\_\_ and extending to and including \_\_\_\_\_, remarketed beginning as of the commencement of such Reset Period. The resumption of deliveries of Base Quantities in any future Reset Period shall be in accordance with Section 3.5(d) of the Clean Energy Purchase Contract.

Given this [ ] day of [ ], 20[ ].

CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA

By: \_\_\_\_\_  
Printed Name:  
Title:

## EXHIBIT D

### FORM OF FEDERAL TAX CERTIFICATE

This Federal Tax Certificate is executed in connection with the Clean Energy Purchase Contract dated as of [\_\_\_\_], 2022 (the “Clean Energy Purchase Contract”), by and between the California Community Choice Financing Authority (“Issuer”) and Clean Power Alliance of Southern California, a California joint powers authority (“Power Purchaser”). Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Clean Energy Purchase Contract, in the Tax Certificate and Agreement, or in the Bond Indenture.

WHEREAS Power Purchaser acknowledges that Issuer is issuing the Bonds to fund the prepayment price under the Master Power Supply Agreement; and

WHEREAS the Bonds are intended to qualify for tax exemption under Section 103 of the Internal Revenue Code of 1986, as amended; and

WHEREAS Power Purchaser’s use of Energy acquired pursuant to the Clean Energy Purchase Contract and certain funds and accounts of Power Purchaser will affect the Bonds’ qualification for such tax exemption.

NOW, THEREFORE, POWER PURCHASER HEREBY CERTIFIES AS FOLLOWS:

Power Purchaser is a joint powers authority and a community choice aggregator created and existing pursuant to the provisions of California law, organized under the laws of the State of California. As a community choice aggregator, the Power Purchaser is a load-serving entity providing electricity to customers within the boundaries of cities and/or counties that have elected to participate in Power Purchaser’s community choice aggregation program. For purposes of this Certificate, the term “service area” of the Power Purchaser means the boundaries of the cities and/or counties that have elected to participate in the Power Purchaser’s community choice aggregation program, as well as any other area recognized as the service area of the Power Purchaser under state or federal law.

Power Purchaser will resell all of the Energy acquired pursuant to the Clean Energy Purchase Contract to its retail Energy customers within its service area, with retail sales in all cases being made pursuant to regularly established and generally applicable tariffs.

From [\_\_\_\_, ] to [\_\_\_\_, \_\_], the annual average amount of Energy purchased (other than for resale) by customers of Power Purchaser who are located within the service area of Power Purchaser is [\_\_\_\_\_] MWh. Over the term of the Clean Energy Purchase Contract, the Power Purchaser expects the annual average amount of Energy purchased (other than for resale) by customers of the Power Purchaser who are located within the service area of the Power Purchaser to be at least [\_\_\_\_\_] MWh. The maximum annual amount of Energy in any year being acquired pursuant to the Clean Energy Purchase Contract is [\_\_\_\_\_] MWh. The annual average amount of Energy which Power Purchaser otherwise has a right to acquire as of the Closing Date (including

rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) is [ ] MWh. The sum of (a) the maximum amount of Energy in any year being acquired pursuant to the Clean Energy Purchase Contract, and (b) the amount of Energy that Power Purchaser otherwise has a right to acquire (including rights to capacity to generate electricity, whether owned, leased or otherwise contracted for) in the year described in the foregoing clause (a), is [ ] MWh. Accordingly, the amount of Energy to be acquired under the Clean Energy Purchase Contract by Power Purchaser, supplemented by the amount of Energy otherwise available to Power Purchaser as of the Closing Date, during any year does not exceed the sum of [ ]% of the expected annual average amount of Energy to be purchased (other than for resale) by customers of Power Purchaser who are located within the service area of Power Purchaser;

In the event of the expiration or termination of an EPS Energy Period, Power Purchaser agrees to comply with its obligations in the Clean Energy Purchase Contract, including but not limited to its obligations to (a) exercise Commercially Reasonable Efforts to assign a portion of Power Purchaser's rights and obligations under a power purchase agreement under which Power Purchaser is purchasing EPS Compliant Energy to J. Aron pursuant to an Assignment Agreement and (b) cooperate in good faith with Issuer and J. Aron with respect to any proposed assignments.

Power Purchaser expects to pay for Energy acquired pursuant to the Clean Energy Purchase Contract solely from funds derived from its power distribution operations. Power Purchaser expects to use current net revenues of its to pay for current Energy acquisitions. Neither the Power Purchaser nor any person who is a related party to the Purchaser will hold any funds or accounts in which monies are invested and which are reasonably expected to be used to pay for Energy acquired more than one year after such monies are set aside. No portion of the proceeds of the Bonds will be used directly or indirectly to replace funds of Power Purchaser or any persons who are related Persons to Power Purchaser that are or were intended to be used for the purpose for which the Bonds were issued.

\_\_\_\_\_, 2022

By: \_\_\_\_\_

[Name]

[Title]

**EXHIBIT E**

**OPINION OF COUNSEL**

California Community Choice Financing Authority  
San Rafael, CA

Aron Energy Prepay [ ] LLC  
New York, NY

Goldman Sachs & Co. LLC  
New York, NY

[Trustee]  
[ ]

[Swap Counterparty 1]  
[ ]

[Swap Counterparty 2]  
[ ]

Re: Power Supply Contract between Clean Power Alliance of Southern California and California Community Choice Financing Authority dated as of [ ], 2022

Ladies and Gentlemen:

We are Counsel to Clean Power Alliance of Southern California (“Purchaser”). Purchaser is a Purchaser in the Energy Project undertaken by California Community Choice Financing Authority (“Issuer”). We are furnishing this opinion to you in connection with the Power Supply Contract between Issuer and Purchaser dated as of [ ], 2022 (the “Supply Contract”).

Unless otherwise specified herein, all terms used but not defined in this opinion shall have the same meaning as is ascribed to them in the Supply Contract.

In connection with this opinion, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

- (a) The Constitution and laws of the State of California (the “State”) including, as applicable, acts, ordinances, certificates, articles, charters, bylaws, and agreements pursuant to which Purchaser was created and by which it is governed;

(b) Resolution No. [ ], duly adopted by Purchaser on [ ] (the “Resolution”) and certified as true and correct by certificate and seal, authorizing Purchaser to execute and deliver the Supply Contract;

(c) A copy of the Supply Contract executed by Purchaser; and

(d) All outstanding instruments relating to bonds, notes, or other indebtedness of or relating to Purchaser and Purchaser's CCA System (as defined in the Supply Contract).

We have also examined and relied upon originals or copies, certified or otherwise authenticated to our satisfaction, of such records, documents, certificates, and other instruments, and made such investigations of law, as in our judgment we have deemed necessary or appropriate to enable us to render the opinions expressed below.

Based upon the foregoing, we are of the opinion that:

1. Purchaser is a joint powers authority of the State, duly organized and validly existing as a community choice aggregator under the laws of the State, and has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into and to perform its obligations under the Agreement.

2. The execution, delivery, and performance by Purchaser of the Supply Contract have been duly authorized by the governing body of Purchaser and do not and will not require, subsequent to the execution of the Supply Contract by Purchaser, any consent or approval of the governing body or any officers of Purchaser.

3. The Supply Contract is the legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms, except as such enforceability may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity and (ii) bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted, to the extent constitutionally applicable.

4. No approval, consent, or authorization of any governmental or public agency, authority, commission, or person, or, to our knowledge, of any holder of any outstanding bonds or other indebtedness of Purchaser, is required with respect to the execution, delivery and performance by Purchaser of the Supply Contract or Purchaser's participation in the transactions contemplated thereby other than those approvals, consents and/or authorizations that have already been obtained.

5. The authorization, execution and delivery of the Supply Contract and compliance with the provisions thereof (a) will not conflict with or constitute a breach of, or default under, (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) to our knowledge will not result in, or require the creation or

imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

6. Purchaser is not in breach of or default under any applicable constitutional provision or any law or administrative regulation of the State or the United States or any applicable judgment or decree or, to our knowledge, any loan or other agreement, resolution, indenture, bond, note, resolution, agreement or other instrument to which Purchaser is a party or to which Purchaser or any of its property or assets is otherwise subject, and to our knowledge no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument.

7. Payments to be made by Purchaser under the Supply Contract shall constitute operating expenses of Purchaser's CCA System payable solely from the revenues and other available funds of Purchaser's CCA System as a cost of purchased electricity. The application of the revenues and other available funds of Purchaser's CCA System to make such payments is not subject to any prior lien, encumbrance, or other restriction.

8. As of the date of this opinion, to the best of our knowledge after due inquiry, there is no pending or threatened action or proceeding at law or in equity or by any court, government agency, public board or body affecting or questioning the existence of Purchaser or the titles of its officers to their respective offices or affecting or questioning the legality, validity, or enforceability of this Supply Contract nor to our knowledge is there any basis therefor.

This opinion is rendered solely for the use and benefit of the addressees listed above in connection with the Supply Contract and may not be relied upon other than in connection with the transactions contemplated by the Supply Contract, or by any other person or entity for any purpose whatsoever, nor may this opinion be quoted in whole or in part or otherwise referred to in any document or delivered to any other person or entity, without the prior written consent of the undersigned.

Very truly yours,

## EXHIBIT F

### ASSIGNMENT OF ASSIGNABLE POWER CONTRACTS

1. **General Requirements.** Assigned Rights and Obligations under an Assignable Power Contract may only be assigned under this Exhibit F if the following requirements are satisfied or waived by J. Aron and Issuer:
  - 1.1. The seller under such Assignable Power Contract (the “APC Party”) either (i) has a long-term senior unsecured credit rating that is “Baa3” or higher from Moody’s Investor’s Service, Inc. (or any successor to its credit rating service operation), “BBB-” or higher from Standard & Poor’s Global Ratings (or any successor to its credit rating service operation) or “BBB-” or higher from Fitch Ratings, Inc. (or any successor to its credit rating service operation), (ii) provides credit support that is reasonably satisfactory to J. Aron or (iii) otherwise provides evidence of its creditworthiness that is reasonably satisfactory to J. Aron (which, for the avoidance of doubt, may include credit support provided by such APC Party to Purchaser).
  - 1.2. The APC Party satisfies J. Aron’s internal requirements as they relate to “know your customer” rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act, Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements, and corresponding policies.
  - 1.3. The APC Party is organized in the United States and in a jurisdiction that does not present adverse tax consequences to J. Aron or Issuer in connection with such proposed assignment.
  - 1.4. J. Aron, Purchaser, and Issuer have agreed on and executed an Assignment Schedule for such assignment.
  - 1.5. J. Aron, Purchaser, Issuer, and the applicable APC Party have agreed on and executed an Assignment Agreement for such assignment.
  - 1.6. The contract price (in \$/MWh) payable by Purchaser under the applicable Assignable Power Contract (the “APC Contract Price”) is a fixed price unless Issuer, Purchaser and J. Aron agree, each in their sole discretion, to appropriate changes to the relevant documents to accommodate a floating APC Contract Price. For purposes of this Exhibit H, a “fixed price” shall be deemed to include any price that is fixed but for a periodic escalation, whether pre-determined or by reference to a price index, provided that the Base Quantity Reductions required to reflect any index-based escalation shall be made promptly following the time that such index is available.
  - 1.7. If the Assignable Power Contract is unit-contingent or for an as-generated Product, then:
    - 1.7.1. J. Aron has determined with a high degree of certainty that the Applicable Project will be able to generate the Assigned Prepay Value in each Month during the proposed Assignment Period.
    - 1.7.2. The Applicable Project (as defined below) has generated the Assigned Prepay Value (as defined below) in each Month since commencing commercial operation.

2. **Proposed Assignment.** Purchaser may propose an assignment of Assigned Rights and Obligations under Article VI of the Clean Energy Purchase Contract by delivering the following items to Issuer and to J. Aron:
  - 2.1. A written notice of the proposed assignment signed by Purchaser.
  - 2.2. A true and complete copy of the Assignable Power Contract under which such Assigned Rights and Obligations would arise.
  - 2.3. Evidence reasonably satisfactory to Issuer and J. Aron that all authorizations, consents, approvals, licenses, rulings, permits, exemptions, variances, orders, judgments, decrees, declarations of or regulations by any Government Agency necessary in connection with the transactions contemplated by the Assignable Power Contract and the assignment of the Assignable Power Contract to J. Aron have been obtained and are in full force and effect. Such evidence may be provided by a closing certificate with appropriate back-up materials.
  - 2.4. Such additional information as Issuer and J. Aron may reasonably request regarding the Assignable Power Contract and the APC Party.
  - 2.5. If the Assignable Power Contract is unit-contingent or for an as-generated Product, then:
    - 2.5.1. A description and information of the applicable project to which the Assignable Power Contract applies (the "Applicable Project"), including but not limited to information on the location, interconnection(s), and operating and compliance history of Applicable Project.
    - 2.5.2. Either (i) a report from a nationally recognized consultant in the energy industry that is reasonably acceptable to Issuer and J. Aron showing the "P99" forecasted generation ("P99 Generation") and "P50" forecasted generation ("P50 Generation") of the Applicable Project for the entire Assignment Period, as the terms P99 and P50 are commonly used in the renewable energy industry or (ii) monthly historical generation and meteorological data of the Applicable Project dating back to the commercial operation date.

Following Issuer's and J. Aron's receipt of such information, Purchaser and Issuer will and J. Aron has agreed in the Electricity Sale and Service Agreement to (i) negotiate in good faith with one another and exercise Commercially Reasonable Efforts to agree upon an Assignment Schedule, with the initial draft of such Assignment Schedule to be developed by J. Aron, and (ii) negotiate in good faith with one another and the APC Party regarding an Assignment Agreement, in each case related to the proposed assignment. If such Assignment Schedule and Assignment Agreement are agreed to by the representative parties thereto, the applicable parties will execute such Assignment Agreement and Assignment Schedule to be effective upon the assignment of the Assigned Rights and Obligations from Purchaser to J. Aron pursuant to the Assignment Agreement. J. Aron will act in good faith in considering proposed assignments that meet the criteria set forth in this Exhibit F, in accordance with the provisions set forth in the Electricity Sale and Service Agreement. For the avoidance of doubt, Purchaser acknowledges that J. Aron will not be required to execute any Assignment Agreement or Assignment Schedule, or otherwise accept any Assigned Rights and Obligations unless the APC Party (i) satisfies J. Aron's internal requirements as they relate to "know your customer" rules, policies and procedures, anti-money laundering rules and regulations, Dodd-Frank Act,

Commodity Exchange Act, Patriot Act and similar rules, regulations, requirements and corresponding policies, (ii) is organized in the United States, and (iii) satisfies all other requirements in Section 1 of this Exhibit F.

**3. Assignment Schedule.** In connection with each assignment, an “Assignment Schedule” will be prepared in the form attached hereto as Annex I (with such changes as agreed by the Parties in their sole discretion), must be executed by Purchaser, Issuer and J. Aron, and must include each of the following:

3.1. The term of such Assigned Rights and Obligations (an “Assignment Period”) shall have the meaning specified in each applicable Assignment Agreement and shall (i) end not later than (a) the end of the delivery period under the Assignable Power Contract and (b) the end of the Delivery Period under this Agreement, (ii) not commence any earlier than sixty (60) days after Purchaser’s original notice under Section 2.1 above, and (iii) have a primary term that is not less than 18 Months in duration (provided, for the avoidance of doubt, the primary term references the term of the applicable Assignment Period and not the term of the Assignable Power Contract).

3.2. If the Assignable Power Contract is unit-contingent or for an as-generated product, then a description of the Applicable Project.

3.3. The “Assigned Prepay Quantity” means, for each Month of an Assignment Period and each Assignment Agreement, a quantity of Energy agreed upon by J. Aron, Issuer and Purchaser, which Assigned Prepay Quantity, if the Assignable Power Contract is unit contingent or for an as-generated Product, shall not exceed an amount that J. Aron has determined with a high degree of certainty that the Applicable Project will be able to generate in each Month during the Assignment Period; provided that the Assigned Prepay Quantity for each Month may not exceed the limit expressed in the proviso to Section 3.4 below. For the avoidance of doubt, the Assigned Rights and Obligations will include all of Purchaser’s rights to receive Energy under the Assignable Power Contract even if such rights to receive Energy may exceed the Assigned Prepay Quantity.

3.4. An updated Exhibit A-1 to the Clean Energy Purchase Contract reflecting a reduction in Base Quantity for each Hour during an Assignment Period after giving effect to the Assignment Schedule (each, a “Base Quantity Reduction”), which Base Quantity Reduction for each Hour will equal (i) the Assigned Prepay Quantity for such Hour, multiplied by (ii) the result of (A) the APC Contract Price applicable for such Hour, divided by (B) the Fixed Price; provided that if the Base Quantity Reduction for any Hour would result in a Base Quantity of less than zero, then the Assigned Prepay Quantity for such Hour will be reduced to the closest whole MWh such that the Base Quantity is not reduced below zero.

3.5. The APC Contract Price, which as set forth in Section 1.6 above must be a fixed price unless Issuer, Purchaser and J. Aron agree to appropriate changes to the relevant documents to accommodate a floating APC Contract Price.

3.6. The Assigned Delivery Point for all Assigned Energy.

3.7. The Assigned Product included in the Assigned Rights and Obligations, which Assigned Product may not include any Product other than (a) Energy, (b) associated RECs, and (c) other product included within the sale of Energy and not separately

delivered from Energy, provided that the APC Contract Price must be inclusive of any amounts due in respect of all Assigned Product<sup>1</sup>

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<sup>1</sup> Refer to Footnote 2 of the Form of Limited Assignment Agreement.

## ASSIGNMENT SCHEDULE

**Assigned Product:** [\_\_\_\_\_]

**Assigned Delivery Point:** [\_\_\_\_\_]

**Assigned Prepay Quantity:** As set forth in Appendix 2; provided that all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1.

**APC Contract Price:** \$[\_\_\_\_\_] /MWh

**Assignment Period:** [\_\_\_\_\_]

**Other Provisions:**

**Attachment:** Updated Exhibit A-1 to Clean Energy Purchase Contract

## FORM OF LIMITED ASSIGNMENT AGREEMENT

**NOTE:** Purchaser may include the form included in this Annex II as an exhibit to any PPA executed by Purchaser and include the following or similar language in the PPA: “[Seller] agrees that [Buyer] may assign a portion of its rights and obligations under this Agreement to J. Aron & Company LLC (“J. Aron”) at any time upon not less than [ ] days’ notice by delivering a written request for such assignment, which request must include a proposed assignment agreement in the form attached hereto as [Exhibit ], with the blanks in such form completed in [Buyer’s] sole discretion. Provided that [Buyer] delivers a proposed assignment agreement complying with the previous sentence, [Seller] agrees to (i) comply with J. Aron’s reasonable requests for know-your-customer and similar account opening information and documentation with respect to [Seller], including but not limited to 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 J. Aron and Company, LLC and [Buyer].”

**[To be attached in the form agreed by J. Aron and CPA.]**

## EXHIBIT G

### COMMUNICATIONS PROTOCOL FOR BASE QUANTITIES

This Exhibit G (“Communications Protocol”) addresses the Scheduling of Base Quantities to be delivered and received at the Base Delivery Point. It is intended to be attached to both the Master Power Supply Agreement and the Clean Energy Purchase Contract, each as defined below.

#### 4. ADDITIONAL DEFINED TERMS

In addition to the terms defined in Article I of this Agreement, the following terms used in this Communications Protocol shall have the following meanings:

- 4.1. “Agreement” means (i) when this Communications Protocol is attached to the Master Power Supply Agreement, the Master Power Supply Agreement and (ii) when this Communications Protocol is attached to the Clean Energy Purchase Contract, the Clean Energy Purchase Contract.
- 4.2. “Clean Energy Purchase Contract” means that certain Clean Energy Purchase Contract dated as of [\_\_\_\_], 2022 by and between Issuer and Project Participant.
- 4.3. “Delivery Scheduling Entity” means Prepay LLC or a Person designated by Prepay LLC, as set forth in Attachment 4 hereto or in a subsequent written notice to Issuer and the Project Participant.
- 4.4. “Issuer” means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended).
- 4.5. “Master Power Supply Agreement” means that certain Master Power Supply Agreement dated as of [\_\_\_\_], 2022 by and between Prepay LLC and Issuer that is specified as relating to the Clean Energy Purchase Contract with Project Participant.
- 4.6. “Operational Nomination” has the meaning specified in Section 4.1.1.
- 4.7. “Prepay LLC” means Aron Energy Prepay [\_\_] LLC, a Delaware limited liability company.
- 4.8. “Project Participant” means Clean Power Alliance of Southern California, a California joint powers authority.
- 4.9. “Receipt Scheduling Entity” for any Delivery Point means the Project Participant, unless the Clean Energy Purchase Contract has been suspended or terminated, in which case the

Receipt Scheduling Entity will be Issuer or a Person designated by Issuer for such Delivery Point in accordance with this Communications Protocol.

- 4.10. “Relevant Contract” means the Master Power Supply Agreement and the Clean Energy Purchase Contract.
- 4.11. “Relevant Party” means Issuer, Prepay LLC or the Project Participant.
- 4.12. “Relevant Third Party” means any Person that is (i) a Transmission Provider that will or is intended to transport Product to be delivered or received under the Agreement, (ii) an independent system operator or control area that coordinates the Scheduling of Product at the Base Delivery Point, (iii) Scheduling receipt of Product by Issuer or for the account of Issuer to the extent such Product has been delivered to Issuer or for the account of Issuer under the Master Power Supply Agreement, and (iv) delivering Product to Issuer or for the account of Issuer to the extent such Product is intended to be re-delivered ultimately to the Project Participant or for the account of the Project Participant under the Clean Energy Purchase Contract.
- 4.13. “Scheduling Entities” means the Receipt Scheduling Entity and the Delivery Scheduling Entity.

## 5. AGREEMENTS OF RELEVANT PARTIES

Each Relevant Party that is a party to Relevant Contract to which this Communications Protocol is attached acknowledges that this Communications Protocol sets forth certain obligations that may be delegated to other Relevant Parties that are not parties to such Relevant Contracts. In connection therewith:

- 2.1 ***Reliance on Scheduling Entity.*** Each Relevant Party shall be entitled to rely exclusively on any communications or directions given by a Delivery Scheduling Entity or Receipt Scheduling Entity, in each case to the extent such communications are permitted hereunder.
- 2.2 ***Performance of Communications Protocol.*** Each Relevant Party to a Relevant Contract shall cause its counterparty to each other Relevant Contract to comply with the provisions of this Communications Protocol as the provisions apply to such counterparty to the extent required to perform the obligations of the Relevant Party under the Relevant Contract.
- 2.3 ***Third Party Beneficiaries.*** To the extent this Communications Protocol purports to give any Relevant Party (a “Beneficiary”) rights vis-à-vis any other Relevant Party (a “Burdened Party”) with whom such Beneficiary does not have privity under a Relevant Contract, such Beneficiary shall be deemed to be a third party beneficiary of each Relevant Contract to which the Burdened Party is a party to the

extent necessary or convenient to enforce the obligations of the Burdened Party under this Communications Protocol.

- 2.4 ***Amendment of Relevant Contracts.*** No Relevant Party shall amend, waive or otherwise modify any provision of any Relevant Contract to which it is a party without the consent of each other Relevant Party whose rights or obligations would be materially and adversely affected by such amendment, waiver or modification as it relates to this Communications Protocol.
- 2.5 ***Amendment of Communications Protocol.*** No Relevant Party shall amend any provision of this Communications Protocol in a Relevant Contract without the consent of each other Relevant Party.
- 2.6 ***Waiver of Communications Protocol.*** No Relevant Party shall waive any provision of this Communications Protocol in a Relevant Contract without the consent of each other Relevant Party whose rights or obligations would be materially and adversely affected by such waiver.

### **3 DESIGNATION AND REPLACEMENT OF SCHEDULING ENTITIES**

- 3.1 ***Designation of Delivery Scheduling Entity.*** Prepay LLC may designate a new Delivery Scheduling Entity upon thirty (30) days written notice to Issuer substantially in the form of Attachment 4. Any Scheduling Entity designated in accordance with this Section 3.1 shall commence service at the beginning of a Month, unless mutually agreed in writing between Prepay LLC and Issuer.
- 3.2 ***Assumption by Receipt Scheduling Entity.*** If any Delivery Scheduling Entity (other than Prepay LLC) persistently fails to perform its obligations as contemplated under this Communications Protocol, the Receipt Scheduling Entity may, by notice to Prepay LLC, require that Prepay LLC deal directly with the Receipt Scheduling Entity until a new Delivery Scheduling Entity is designated in accordance with this Section 3.1.
- 3.3 ***Scheduling Coordinator.*** Project Participant shall designate a scheduling coordinator for the purposes of accepting Base Product delivery at the Base Delivery Point through the scheduling of ISTs.

### **4 INFORMATION EXCHANGE AND COMMUNICATION BETWEEN ISSUER AND PREPAY LLC**

- 4.1 ***Communication of Operational Nomination Details.***
  - 4.1.1 Not later than three Days prior to each Day during which Base Product is required to be delivered under the Agreement, the Receipt Scheduling Entity for such Delivery Point may deliver an operational nomination in

writing (the “Operational Nomination”) indicating any inability of a Project Participant to receive all of its Base Quantities during such Day, which Operational Nomination shall be without prejudice to any party’s rights under the Relevant Contracts for failure to receive Base Quantities. If no changes to Base Quantities are so submitted, the Operational Nomination shall be deemed to nominate the full Base Quantities required to be delivered on a Day.

- 4.1.2 Not later than three Days prior to each Day during which Base Product is required to be delivered under the Agreement, the Delivery Scheduling Entity for such Delivery Point may revise the Operational Nomination to indicate any inability of Prepay LLC to deliver all Base Quantities during such Day, which revised Operational Nomination shall be without prejudice to any party’s rights under the Relevant Contracts for failure to deliver Base Quantities.

#### **4.2 *Event-specific Communications.***

- 4.2.1 Remarketing Notices issued by Issuer under the Master Power Supply Agreement shall be substantially in the form of Attachment 2 hereto. Any such notices to remarket must be delivered directly to Prepay LLC and the Delivery Scheduling Entity.
- 4.2.2 Each Scheduling Entity shall notify Prepay LLC, Issuer and the Project Participant as soon as practicable in the event of: (i) any deficiencies in Scheduling related to such Scheduling Entity; (ii) any deficiencies in Scheduling related to the other such Scheduling Entity; and (iii) any issues with Relevant Third Parties that that would reasonably be expected to create issues related to Product Scheduling under the Relevant Contract.

## **5 ACCESS AND INFORMATION**

5.1 ***Verification of Product Scheduled.*** In addition to the delivery of and access to the records and data required pursuant to the Agreement, each Relevant Party agrees to provide relevant records from itself and other Relevant Third Parties necessary to document and verify Product Scheduled within and after the Month as needed to facilitate the Relevant Contracts.

5.2 ***View Rights.*** To the extent requested by a Delivery Scheduling Entity or Prepay LLC, the Receipt Scheduling Entities will use Commercially Reasonable Efforts to cooperate with the Delivery Scheduling Entity and Prepay LLC to ensure that Delivery Scheduling Entity and Prepay LLC has sufficient agency view rights from each such Scheduling Entity to allow Prepay LLC to view Base Product Scheduling at the Base Delivery Point.

## **6 NOTICES**

Any notice, demand, request or other communication required or authorized by this Communications Protocol to be given by one Relevant Party to another Relevant Party shall be in writing, except as otherwise expressly provided herein. It shall either be sent by facsimile (with receipt confirmed by telephone and electronic transmittal receipt), courier, or personally delivered (including overnight delivery service) to the representative of the other Relevant Party designated in Attachment 1 hereto. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone and electronic transmittal receipt or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Relevant Party shall have the right, upon written notice to the other Relevant Parties, to change its address at any time, and to designate that copies of all such notices be directed to another Person at another address.

## **7 NO IMPACT ON CONTRACTUAL OBLIGATIONS**

Except as expressly set forth herein or in an applicable Relevant Contract, nothing in this Communications Protocol nor any Relevant Party's actions or inactions hereunder shall have any impact on any Relevant Party's rights or obligations under the Relevant Contracts.

## **8 ATTACHMENTS**

Attachment 1 - Key Personnel

Attachment 2 - Remarketing Notice Form

Attachment 3 - Designation of Alternate Base Delivery Points Form

Attachment 4 - Designation of Scheduling Entities Form

## Attachment 1

### Key Personnel

#### Prepay LLC Marketing Personnel:

Kenan Arkan  
Sales and Trading  
Telephone: (212) 357-2542  
gs-prepay-notices@gs.com

#### Prepay LLC Scheduling Personnel:

Scheduling Team  
Email: ficc-jaron-natgasops@ny.email.gs.com  
Direct Phone: (212) 902-8148  
Fax: 212.493.9847

Carly Norlander  
ICE Chat: cnorlander1  
Email: ficc-jaron-natgasops@ny.email.gs.com  
Direct Phone: (403) 233-9299  
Fax: (212) 493-9847

#### Other Prepay LLC Personnel:

Eric Hudson  
Telephone: (212) 855-0880  
ficc-struct-sett@gs.com

Patricia Hazel  
Telephone: (212) 855-0880  
ficc-struct-sett@gs.com

Andres E. Aguila  
Telephone: (212) 855-6008  
Fax: (212) 291-2124  
andres.aguila@gs.com

**Issuer Personnel:**  
seriesanotices@cccfa.org

**Project Participant Personnel:**  
[Email]

**Attachment 2**

**Remarketing Notice Form**

Date: [ \_\_\_\_\_ ]

To: Prepay LLC Scheduling

From: Project Participant Scheduling

This notice is being delivered pursuant to that certain Master Power Supply Agreement (the “Master Power Supply Agreement”) dated as of [\_\_\_\_], 2022 by and between Aron Energy Prepay [\_\_] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and relates to the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance of Southern California (“Project Participant”). Capitalized terms not defined herein are defined in the Master Power Supply Agreement.

Check the box to indicate type of Remarketing Notice (*The numbers of the Primary (“P”) and Alternate (“A”) Delivery Points below correspond to those same Primary Delivery Points and Alternate Delivery Points set forth in Exhibit A-1 of the Agreement, or as may be designated by the Parties from time to time*):

Monthly Remarketing Notice:

Month(s) for which remarketing is requested: \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

Pursuant to Section 3(b) of Exhibit C of the Clean Energy Purchase Contract, Project Participant requests that Prepay LLC remarket in such Month(s) the following Base Quantities of Product required to be delivered at the following Delivery Points:

<b>Delivery Point (P/A, #)</b>	<b>MWh/ Hour for each Hour in the Month</b>

Daily Remarketing Notice:

Hours for which remarketing is requested: \_\_\_\_\_, 20\_\_ through  
\_\_\_\_\_, 20\_\_.

Pursuant to Section 3(c) of Exhibit C of the Clean Energy Purchase Contract, Project Participant requests that Prepay LLC remarket for such Hours the following Base Quantities of Product required to be delivered at the following Delivery Point:

<b>Delivery Point (P/A, #)</b>	<b>MWh/Hour</b>

Submitted by Project Participant:  
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: \_\_\_\_\_  
Name:  
Title:

**Attachment 3**

**Designation of Alternate Base Delivery Points Form**

This designation is delivered pursuant to that certain Master Power Supply Agreement (the “Master Power Supply Agreement”) dated as of [\_\_\_\_], 2022 by and between Aron Energy Prepay [\_\_] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance of Southern California (“Project Participant”). Capitalized terms not defined herein are defined in the Master Power Supply Agreement and the Clean Energy Purchase Contract. [Project Participant and/or Issuer] hereby proposes the following Alternate Delivery Points for deliveries of Energy that would otherwise be made at the specified Primary Delivery Point:

<b>ALTERNATE DELIVERY POINT</b>	<b>PRIMARY DELIVERY POINT AFFECTED</b>	<b>COMMODITY REFERENCE PRICE PRICING POINT</b>	<b>ADDITIONAL RESTRICTIONS</b>
1			[e.g.
2			Vol. Limit:
3			Time Limit:]
(etc.)			

Unless otherwise agreed among Prepay LLC, Issuer and Project Participant, an Alternate Delivery Point shall utilize the same Commodity Reference Price as the Primary Delivery Point it replaces or otherwise affects. Project Participant is not required to agree or accept this designation (or any change to the Commodity Reference Price) if it is being submitted by Issuer pursuant to the Master Power Supply Agreement only.

<b>AGREED AND ACCEPTED BY PREPAY LLC:</b>	<b>(if required) AGREED TO AND ACCEPTED BY PROJECT PARTICIPANT:</b>	<b>(if required) AGREED TO AND ACCEPTED BY ISSUER:</b>
By: Name: Title:	By: Name: Title:	By: Name: Title:

**Attachment 4**

**Designation of Scheduling Entities Form**

This designation is being delivered pursuant to that certain Master Power Supply Agreement (the “Master Power Supply Agreement”) dated as of [\_\_\_\_], 2022 by and between J. Aron Energy Prepay [\_\_] LLC (“Prepay LLC”) and California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (“Issuer”) and relates to the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) dated as of [\_\_\_\_], 2022 by and between Issuer and Clean Power Alliance of Southern California (“Project Participant”). Capitalized terms not defined herein are defined in the Master Power Supply Agreement and Clean Energy Purchase Contract.

[If delivered by Project Participant:

**Receipt Scheduling Entity:**

Delivery Point: \_\_\_\_\_

Effective Date(s) of Service of Receipt Scheduling Entity (full Months only):  
\_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_, if applicable

Notice Information for Receipt Scheduling Entity:

Name: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_]

[If delivered by Prepay LLC:

**Delivery Scheduling Entity:**

Delivery Point: \_\_\_\_\_

Effective Date(s) of Service of Delivery Scheduling Entity (full Months only):  
\_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_, if applicable

Notice Information for Delivery Scheduling Entity:

Name: \_\_\_\_\_

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Submitted by:

[Project Participant or Prepay LLC]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT H

### PRICING AND OTHER TERMS

Administrative Fee:	\$[____]/MWh
Delivery Period:	The period beginning on and including [____], 2022 and ending at the end of the Day before [____], 20[____]; provided that the Delivery Period shall end immediately upon termination of deliveries of Product under the Master Power Supply Agreement pursuant to Article XVII thereof or early termination of the Clean Energy Purchase Contract pursuant to <u>Article XVII</u> hereof.
Initial Reset Period:	The period beginning at the beginning of the Day on [____], 2022 and ending at the end of the Day before [____], 20[____].
Minimum Discount Percentage:	An Available Discount Percentage as determined under the Re-Pricing Agreement of [____]%.
Monthly Discount Percentage:	For each Month of the Initial Reset Period, [____]%, and for each Month of any other Reset Period, the percentage determined by the Calculation Agent as defined in and pursuant to the Re-Pricing Agreement, exclusive of any Annual Refund.

**EXHIBIT I  
FORM OF CLOSING CERTIFICATE**

**CLOSING CERTIFICATE OF PURCHASER**

\_\_\_\_\_, 2022

Re: California Community Choice Financing Authority  
[Clean Energy Project Revenue Bonds]

The undersigned \_\_\_\_\_ of Clean Power Alliance of Southern California (“*Purchaser*”) hereby certifies as follows in connection with the Power Supply Contract dated as of \_\_\_\_\_, 2022 (the “*Agreement*”) between the Purchaser and California Community Choice Financing Authority (“*Issuer*”) and the issuance and sale by Issuer of the above-referenced bonds (the “*Bonds*”) (capitalized terms used and not defined herein shall have the meanings given to them in the Agreement):

1. Purchaser is a joint powers authority, duly organized and validly existing and in good standing under the laws of the State of California (the “*State*”) and has the corporate power and authority to enter into and perform its obligations under the Agreement.

2. By all necessary official action on its part, Purchaser has duly authorized and approved the execution and delivery of, and the performance by Purchaser of the obligations on its part contained in, the Agreement, and such authorization and approval has not been amended, supplemented, rescinded, or modified in any respect since the date thereof.

3. The Agreement constitutes the legal, valid, and binding obligation of Purchaser.

4. The authorization, execution and delivery of the Agreement and compliance with the provisions on Purchaser's part contained therein (a) will not conflict with or constitute a breach of or default under (i) any instrument relating to the organization, existence or operation of Purchaser, (ii) any ruling, regulation, ordinance, judgment, order or decree to which Purchaser (or any of its officers in their respective capacities as such) is subject, or (iii) any provision of the laws of the State relating to Purchaser and its affairs, and (b) will not result in, or require the creation or imposition of, any lien on any of the properties or revenues of Purchaser pursuant to any of the foregoing.

I-1

5 Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which Purchaser is a party or to which Purchaser or any of its property or assets are subject, and no event has occurred and is continuing which constitutes, or with the passage of time or the giving of notice, or both, would constitute, a default or event of default by Purchaser under any of the foregoing.

6. Payments to be made by Purchaser under the Agreement shall constitute operating expenses of Purchaser's power supply system payable solely from the revenues and other available funds of Purchaser's power supply system as a cost of purchased electricity.

7. No litigation, proceeding or tax challenge is pending or, to its knowledge, threatened, against Purchaser in any court or administrative body which would (a) contest the right of the officials of Purchaser to hold and exercise their respective positions, (b) contest the due organization and valid existence of Purchaser, (c) contest the validity, due authorization and execution of the Agreement, or (d) attempt to limit, enjoin or otherwise restrict or prevent Purchaser from executing, delivering and performing the Agreement, nor to the knowledge of Purchaser is there any basis therefor.

8. All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency, or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by Purchaser of its obligations under the Agreement have been duly obtained.

9. The representations and warranties of Purchaser contained in the Agreement were true, complete, and correct on and as of the date thereof and are true, complete and correct on and as of the date hereof.

10. The statements and information with respect to Purchaser contained in the Preliminary Official Statement dated [\_\_\_\_], 2022 and the Official Statement dated [\_\_\_\_], 2022 with respect to the Bonds, including Appendix A thereto (together, the "*Official Statement*"), fairly and accurately describe and summarize the financial and operating position of Purchaser for the periods shown therein, and such statements and information did not as of the respective dates of the Official Statement and do not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make such statements and information, in the light of the circumstances under which they were made, not misleading.

11. To Purchaser's knowledge, no event affecting Purchaser has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and

information with respect to Purchaser contained therein, in light of the circumstances under which they were made, not misleading in any material respect.

IN WITNESS WHEREOF the undersigned has executed this Certificate on and as of the date first written above.

CLEAN POWER ALLIANCE OF SOUTHERN  
CALIFORNIA

By \_\_\_\_\_

Name:

Title:

**CLEAN ENERGY PROJECT OPERATIONAL SERVICES AGREEMENT**

This Clean Energy Project Operational Services Agreement (this “Agreement”) is made and entered into as of [\_\_\_\_], 2022, by and between California Community Choice Financing Authority (“CCCFA”) and Clean Power Alliance of Southern California (“CPA”) with respect to the Clean Energy Project (defined below). CCCFA and CPA may be referred to individually herein as a “Party” and collectively as the “Parties”.

**W I T N E S S E T H:**

WHEREAS, CPA is a “community choice aggregator” under the Public Utilities Code of the State of California, as amended; and

WHEREAS, CCCFA is a joint exercise of powers authority under and pursuant to the Joint Exercise of Powers Act, constituted as Chapter 5 of Division 7 of Title 1 of the California Government Code, being Section 6500 and following, as amended (the “Joint Power Act”), and pursuant to the Joint Power Act, a Joint Powers Agreement by and among the Members of CCCFA named therein, including CPA (as the same may be amended or supplemented from time to time in accordance with its terms, the “Joint Powers Agreement”); and

WHEREAS, CCCFA’s purpose is to assist its Members, including CPA, by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members by, among other things, issuing or incurring bonds and entering into related contracts with Members; and

WHEREAS, CCCFA and CPA are entering into a Clean Energy Purchase Contract, dated [\_\_\_\_], 2022 (as amended, restated, supplemented, or otherwise modified from time to time, the “Clean Energy Purchase Contract”), pursuant to which CCCFA has agreed to supply Energy to CPA under the terms set forth therein; and

WHEREAS, in order to provide such Energy to CPA under the Clean Energy Purchase Contract, CCCFA is entering into a Master Power Supply Agreement, dated [\_\_\_\_], 2022 (as amended, restated, supplemented, or otherwise modified from time to time, the “Master Power Supply Agreement”), between CCCFA, as buyer, and Aron Energy Prepay 14 LLC, a Delaware limited liability company, as seller (the “Prepaid Seller”), under which it will make a prepayment to the Prepaid Seller for the purchase and delivery of such Energy; and

WHEREAS, in order to meet its obligations under the Master Power Supply Agreement, Prepaid Seller will enter into an Electricity Purchase, Sale and Service Agreement, dated as of [\_\_\_\_], 2022 (as amended, restated, supplemented or otherwise modified from time to time, the “ESSA”) with J. Aron & Company LLC, a New York limited liability company (“J. Aron”); and

WHEREAS, the Issuer will finance the prepayment under the Master Power Supply Agreement and related costs by issuing its Clean Energy Project Revenue Bonds, Series 2022[\_\_\_] (the “Bonds”) pursuant to a Trust Indenture, dated as of [\_\_\_\_] 1, 2022 (as amended, restated, supplemented, or otherwise modified from time to time, the “Bond Indenture”), between CCCFA and [\_\_\_\_], as trustee (together with any successor or replacement trustee under the Bond Indenture, the “Trustee”); and

WHEREAS, the issuance of the Bonds by CCCFA and relating undertakings of CCCFA under the Bond Indenture, the acquisition and sale of Energy and related undertakings of CCCFA under the Master Power Supply Agreement and the Clean Energy Purchase Contract, and the sale to CPA of such Energy and related undertakings of CPA under the Clean Energy Purchase Contract are referred to herein as the “Clean Energy Project”; and

WHEREAS, the Parties are entering into this Agreement in order to provide for the administration of certain operational matters relating to the Clean Energy Project;

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Bond Indenture, the Clean Energy Purchase Contract, or the Master Power Supply Agreement, as applicable.

Section 2. Assignment Agreements. As contemplated by the ESSA, the Master Power Supply Agreement, and the Clean Energy Purchase Contract, CPA will enter into the Initial Assignment Agreements and may from time to time enter into additional Assignment Agreements to provide for the assignment of Assigned Product for delivery to CCCFA under the Master Power Supply Agreement and to CPA under the Clean Energy Purchase Contract. With respect to any Assignment Agreement, the Parties acknowledge and agree as follows:

(a) as of the date of this Agreement, CPA has entered into the Initial Assignment Agreements specified in the Clean Energy Purchase Contract;

(b) subject to the terms of the applicable Assignment Letter Agreement, CPA may from time to time enter into additional Assignment Agreements with respect to all or a portion of its Base Quantities specified in the Clean Energy Purchase Contract; and

(c) CPA shall determine in its sole discretion when and if any Assignment Agreement is entered into (subject to J. Aron’s consent as provided in the Clean Energy Purchase Contract) or terminated (subject to the terms of the Assignment Letter Agreement) and the underlying power purchase agreement and portion of the Base Quantities to which such Assignment Agreement relates.

Section 3. Scheduling and Delivery of Assigned Energy. Assigned Energy and any other Assigned Product delivered to CCCFA under the Master Power Supply Agreement shall be Scheduled by CPA for delivery to CCCFA under the Master Power Supply Agreement and for delivery to CPA under the Clean Energy Purchase Contract, and CCCFA shall have no responsibility for (a) any Scheduling or other operational requirements necessary for the delivery of Assigned Energy to CPA’s Assigned Delivery Point and the transfer of other Assigned Product to CPA, or (b) any accounting for under-deliveries or over-deliveries or other record-keeping requirements with respect to any Assigned Energy and other Assigned Product, all of which shall be the sole responsibility of CPA.

Section 4. Qualified Use; Remarketing of Base Energy. Any Base Quantities required to be delivered by the Prepaid Seller are required to be remarketed by the Prepaid Seller pursuant to the Master Power Supply Agreement except in the circumstances specified in Section 3.2 of the Master Power Supply Agreement. CPA shall be responsible for any notices or other communications required from CCCFA in

connection with such remarketing, as well for communications required for the Scheduling and delivery of Base Quantities under the communications protocol set forth in Exhibit G to the Master Power Supply Agreement and any other operational requirements related to the delivery and remarketing of Base Quantities under the Master Power Supply Agreement. CPA will account for any Base Quantities and subsequently remarketed, including accounting for any remediation of any such remarketing sales as may be required pursuant to the Qualifying Use Requirements and the terms of the Clean Energy Purchase Contract. CPA agrees to provide to CCCFA any information reasonably requested by it in order to comply with any reporting or record-keeping requirements related to such delivery and remarketing of Base Quantities, including such information relating to compliance with the Qualifying Use Requirements, as may be required pursuant to the Master Power Supply Agreement or the Bond Indenture.

Section 5. Directions, Consents, and Waivers. CCCFA may be requested or required from time to time to provide certain directions, consents, or waivers under the terms of the Master Power Supply Agreement, the Bond Indenture and the Re-pricing Agreement. Provided no event of default has occurred and is continuing with respect to CPA under the Clean Energy Purchase Contract, such direction, consent, or waiver shall only be provided by CCCFA in accordance with written instructions provided by CPA.

Section 6. Re-pricing Information. CCCFA shall provide, or cause Prepaid Seller to provide, to CPA such information as is required to be provided by Prepaid Seller to CCCFA in accordance with the Re-pricing Agreement at such times as are required under the Re-pricing Agreement. Provided no event of default has occurred and is continuing with respect to CPA under the Clean Energy Purchase Contract, any direction, consent, or waiver requested or required to be provided by CCCFA under the Re-pricing Agreement shall only be provided by CCCFA in accordance with written instructions provided by CPA.

Section 7. Project Administration Fee; Reimbursement and Refund of Operating Expenses.

(a) Under the Clean Energy Purchase Contract, CPA is required to include in its payment to CCCFA for [ ] of each year commencing [ 202 ], an annual Project Administration Fee determined by CCCFA based on the budgeted Operating Expenses of CCCFA for the next succeeding annual period, but only to the extent the expected Revenues (as defined in the Bond Indenture) for such annual period will not be sufficient to pay such Operating Expenses as the same become due. CCCFA agrees to allocate amounts received in respect of the Project Administration Fee to pay Operating Expenses (as defined in the Bond Indenture) as the same become due and payable during such annual period to the extent not paid from Revenues. In the event amounts paid in respect of the Project Administration Fee are not sufficient to pay such Operating Expenses when due, CPA agrees to pay such additional amounts as are necessary to pay such Operating Expenses upon receipt of notice of the amount due from the Trustee or CCCFA.

(b) As soon as practicable following the end of each annual period referred to in paragraph (a), CCCFA agrees to reconcile the amounts received in respect of the Project Administration Fee for such annual period with the Operating Expenses paid or accrued for such period. In the event that, following each such reconciliation, it is determined that the amounts received in respect of the Project Administration Fee during the applicable annual period exceed Operating Expenses paid or accrued for such period, CCCFA will provide written notice thereof to CPA and include the amount of such excess in its Annual Refund to CPA under the Clean Energy Purchase Contract.

Section 8. Notices. Notices and other information to be provided by a Party to the other Party under this Agreement shall be provided in accordance with Article XVI of the Clean Energy Purchase Contract.

Section 9. Governing Law. This Agreement and the obligations of the Parties hereunder shall be governed by and determined in accordance with the laws of the State of California.

Section 10. Counterparts. This Agreement may be executed and acknowledged in multiple counterparts and by the Parties in separate counterparts, each of which shall be an original and all of which shall be and constitute one and the same instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CALIFORNIA COMMUNITY CHOICE FINANCING  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CLEAN POWER ALLIANCE OF SOUTHERN  
CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FORM OF ASSIGNMENT SCHEDULE  
[PROJECT NAME]**

**Assigned Product:** [\_\_\_\_\_]

**Assigned Delivery Point:** [\_\_\_\_\_]

**Assigned Prepay Quantity:** As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1 and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and J. Aron and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

**APC Contract Price:** \$[\_\_\_\_\_] / MWh

**Assignment Period:** [\_\_\_\_\_]

**Other Provisions:** [\_\_\_\_\_]

**FORM OF LIMITED ASSIGNMENT AGREEMENT**

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_], 2022 by and among [\_\_\_\_], [\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

**1. Limited Assignment and Delegation.**

- (a) PPA Buyer hereby assigns, transfers, and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron 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**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it shall have the option to make such payment and that it will be an Event of Default pursuant to Section [\_\_\_\_] if PPA Buyer does not make such payment within five (5) Business Days of receiving Notice of such non-payment from PPA Seller; in which case, PPA Buyer will exercise its reimbursement claim pursuant to Section 6.5 of the Clean Energy Purchase Contract, dated as of [\_\_\_\_], by and between PPA Buyer and California Community Choice Financing Authority (the “Clean Energy Purchase Contract”).
- (c) J. Aron 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 pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice of a Force Majeure Event or Event of Default or default, breach or other occurrence

that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to J. Aron of annual forecasts of Energy and monthly forecasts of available capacity and Energy provided pursuant to Section [ ] of the PPA; (iv) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section [ ], provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section [ ], will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.

- (e) PPA Seller acknowledges that (i) J. Aron 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) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products (“PPA Buyer Receivables”) may be transferred to J. Aron. To the extent any such PPA Buyer Receivables are transferred to J. Aron, J. Aron may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation. Thereafter, PPA Seller shall be entitled to pursue collection on such PPA Buyer Receivables directly against PPA Buyer.
- (f) On or before the commencement of the Assignment Period, The Goldman Sachs Group (“Guarantor”), Inc. will issue, in favor of PPA Seller, a guaranty of J. Aron’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“Guaranty”).
- (g) [***Gross Settlements Option:***]<sup>1</sup> The Parties acknowledge that the PPA currently provides for net settlement between PPA Seller and PPA Buyer of (x) CAISO Revenues in excess of CAISO Costs for each Settlement Interval and (y) Buyer’s obligation to pay the Contract Price for Facility Energy for each Settlement Interval. During the Assignment Period, the PPA will be amended to provide that such amounts are gross settled through the Custodial Agreement described below. Therefore, during the Assignment Period only, the PPA will be deemed to be amended to provide that:
  - a. Section 3.3(a)(i) will be amended to read as follows: “For each Settlement Interval, the product of the Contract Price and the aggregate MWh of Facility Energy in such Settlement Interval.”; and
  - b. Section 3.3(d) shall be amended to read as follows: “For each Settlement Interval, Seller shall pay Buyer the excess of CAISO Revenues over CAISO Costs associated with such Settlement Interval. Seller shall pay the amount of such excess to Buyer by the monthly payment date specified in Section 8.2(a).”;
  - c. Section 8.6 (Netting) shall not apply with respect to payments due pursuant to Section 3.3(a)(i) or Section 3.3(d).

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<sup>1</sup> Depending on option selected.

(h) ***IST Deliveries Option:*** The Parties acknowledge that the PPA currently provides for Seller to Schedule Facility Energy into the Day-Ahead Market on behalf of Buyer, and for net settlements between PPA Seller and PPA Buyer of (x) CAISO Revenues in excess of CAISO Costs for each Settlement Interval and (y) Buyer's obligation to pay the Contract Price for Facility Energy for each Settlement Interval. During the Assignment Period, the PPA will be amended to provide that PPA Seller shall Schedule to PPA Buyer in the Day-Ahead Market an amount of Energy consistent with the EIRP Forecast or other forecast agreed upon pursuant to Section 4.3(b) at SP-15 using an Inter-SC Trade. Therefore, during the Assignment Period only, the PPA will be deemed to be amended to provide that:

- a. Section 3.3(a)(i) will be amended to read as follows: "For each Settlement Interval, the product of the Contract Price and the aggregate MWh of Facility Energy in such Settlement Interval."; and
  - b. Section 3.3(d) shall be amended to read as follows: "For each Settlement Interval, Seller shall pay Buyer the excess of CAISO Revenues over CAISO Costs associated with such Settlement Interval. Additionally, with respect to any calendar month during the Delivery Term, Seller shall sum the total for all hours during the month in which Seller schedules an IST to Buyer in the Day-Ahead Market, an amount for each such hour equal to the Scheduled Energy in such hour times the difference between (i) the applicable Day-Ahead Market LMP at the Delivery Point minus (ii) the Day-Ahead Market LMP at SP-15 (such total amount for the month, the "**Monthly IST Settlement Amount**"). If the Monthly IST Settlement Amount is positive, Seller shall pay such amount to Buyer, and if the Monthly IST Settlement Amount is negative, Buyer shall pay such amount to Seller. Seller shall pay the amount of such excess to Buyer by the monthly payment date specified in Section 8.2(a)."
  - c. Section 8.6 (Netting) shall not apply with respect to payments due pursuant to Section 3.3(a)(i) or Section 3.3(d).
- (i) All payments due to PPA Seller in respect of Section [\_\_\_\_] of the PPA will be paid (subject to Section 1(e) above) by J. Aron into the custodial account listed in Appendix 1, and all payments due to PPA Buyer in respect of Section [\_\_\_\_] of the PPA will be paid by PPA Seller into the custodial account listed in Appendix 1, which custodial account is established under that certain Custodial Agreement of even date herewith that J. Aron, PPA Buyer and [Custodian] have entered into for the administration of payments due hereunder.
- (j) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between J. Aron and PPA Buyer and has no impact on PPA Seller's rights and obligations under the PPA.

## **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 specifying a termination date by either J. Aron or PPA Buyer to each of the other Parties;

- (2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by J. Aron within five (5) business days following receipt by J. Aron and PPA Buyer of written notice;
  - (3) delivery of a written notice by PPA Seller if any of the events described in Section [ ] [Bankruptcy] of the PPA occurs with respect to J. Aron; or
  - (4) delivery of a written notice by J. Aron if any of the events described in Section [ ] [Bankruptcy] of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), 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 clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron 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.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron 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.
- (d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron 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. Representations and Warranties.** The PPA Seller and the PPA Buyer represent and warrant to J. Aron that (a) the PPA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

**4. 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 Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to J. Aron shall be

provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC  
200 West Street  
New York, New York 10282-2198  
Email: gs-prepay-notices@gs.com

**5. Miscellaneous.** Sections  (Buyer’s Representations and Warranties),  (Confidential Information), Sections  (Severability),  (Counterparts),  (Amendments),  (No Agency),  (Mobile-Sierra),  (Counterparts),  (Facsimile or Electronic Delivery), Section  (Binding Effect) and  (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**6. U.S. Resolution Stay Provisions.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“ISDA U.S. Stay Protocol”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

**7. 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 California, 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 the federal courts of the United States of America for the Southern District of California sitting in the city and county of Los Angeles.
- (c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA SELLER]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CLEAN POWER ALLIANCE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

J. ARON & COMPANY LLC

By: \_\_\_\_\_

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** “PPA” means that certain Power Purchase and Sale Agreement dated [\_\_\_\_], by and between Clean Power Alliance and [\_\_\_\_], as amended from time to time.

“**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 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

**Assigned Product:** “Assigned Products” includes all (i) Energy and (ii) Green Attributes (PCC1) produced by the Facility<sup>2</sup>.

**Further Information:** PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy under the PPA pursuant to Section [\_\_] of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both J. Aron and Clean Power Alliance upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

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<sup>2</sup> Inclusion of capacity as an “Assigned Product” is under review with Tax Counsel and J. Aron and may be included in this definition to the extent approved.

## **Appendix 2**

### **Assigned Prepay Quantity**

[NOTE: To be set forth in a monthly volume schedule.]

### Appendix 3

#### Form of GSG Guaranty

[ ], 2022

NAME  
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “Guarantor”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “Company”), to **COUNTERPARTY NAME** (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Clean Power Alliance dated as of [ ], 2022. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor, or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported

assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

**THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.**

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: \_\_\_\_\_  
Authorized Officer

**LETTER AGREEMENT**

[\_\_\_\_], 2022

Clean Power Alliance  
801 South Grand Avenue, Suite 400  
Los Angeles, CA 90017

Re: Prepay Limited Assignment Agreements

Ladies and Gentlemen:

This Letter Agreement (this “Letter Agreement”) confirms our mutual agreement with respect to the matters set forth below and relates to those certain Limited Assignment Agreements listed on Exhibit A (the “Assignment Agreements”, which definitions shall include any new Assignment Agreements identified by J. Aron’s delivery of an updated Exhibit A consistent with Section 2), with each of the PPA Sellers identified in Exhibit A (each, individually, a “PPA Seller” and collectively the “PPA Sellers”, and which definitions shall include any new PPA Seller identified by J. Aron’s delivery of an updated Exhibit A consistent with Section 2). Any capitalized term used in this Letter Agreement and not otherwise defined herein shall have the meaning assigned to such term in the Clean Energy Purchase Contract. In consideration of each party’s execution of the Assignment Agreements, as well as the premises above and the mutual covenants and agreements set forth herein, J. Aron & Company LLC (“J. Aron”) and Clean Power Alliance of Southern California (“CPA” and together with J. Aron, collectively the “Parties”) agree as follows:

1. **Assignment Early Termination.** Each of the Parties agrees that it shall only exercise its right to deliver a written notice of terminating an Assignment Period under an Assignment Agreement consistent with the following:

(a) Either Party may deliver a notice of termination in the event of (i) the suspension, expiration, or termination of performance of a PPA by either CPA or the applicable PPA Seller; or (ii) the termination or suspension of deliveries for any reason other than force majeure under (A) that certain Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”), dated as of [\_\_\_\_], 2022 by and between CPA and California Community Choice Financing Authority (including, for the avoidance of doubt, due to a “Remarketing Election” by CPA under the Clean Energy Purchase Contract) or (B) that certain Electricity Purchase, Sale and Service Agreement, dated as of [\_\_\_\_], 2022 by and between J. Aron and Aron Energy Prepay 5 LLC (the “Electricity Sale and Service Agreement”);

(b) CPA shall deliver a notice of termination contemporaneous with any assignment by CPA of its interest in the Clean Energy Purchase Contract, provided that J. Aron in any event shall be entitled to deliver a notice of termination to the extent CPA fails to do so in connection with the assignment of CPA’s interest under the Clean Energy Purchase Contract;

(c) J. Aron may deliver a notice of termination if (i) PPA Seller delivers less than the Assigned Prepay Quantity for any five months in the aggregate during a twelve month period or

(ii) any event or circumstance occurs that would give either CPA or a PPA Seller the right to terminate or suspend performance under a PPA (regardless of whether CPA or the applicable PPA Seller exercises such right);

(d) either Party may deliver a notice of termination to the extent that the Parties have mutually agreed upon an assignment of Replacement Assigned Rights and Obligations (as defined in the Clean Energy Purchase Contract) that will replace the Assigned Rights and Obligations under the applicable Assignment Agreement immediately following the termination thereof; and

(e) either Party may deliver a notice of termination under the applicable Assignment Agreement to the extent that:

(i) any of the representations and warranties set forth in Sections 5.4 of the Electricity Sale and Service Agreement and the Clean Energy Purchase Contract, respectively, ceases to be true with respect to an Assigned PPA;

(ii) the Assigned Energy being delivered pursuant to an Assignment Agreement ceases to be EPS Compliant Energy; or

(iii) any Assigned Product that constituted PCC1 Product or Long-Term PCC1 Product while being delivered directly to CPA under an Assigned PPA ceases to qualify as PCC1 Product or Long-Term PCC1 Product when being redelivered through the Electricity Sale and Service Agreement, Master Power Supply Agreement and Clean Energy Purchase Contract.<sup>1</sup>

For the avoidance of doubt, each of the Parties agrees that it shall not terminate an Assignment Agreement pursuant to Section 4(a)(1) thereof except as set forth immediately above.

2. **Exhibit A.** Promptly following execution of the Assignment Agreements with respect to the Initial Assigned Rights and Obligations, J. Aron shall deliver an Exhibit A that lists such Assignment Agreements. J. Aron shall deliver an updated Exhibit A to this Agreement to reflect any changes to the information set forth therein in connection with the termination, expiration or replacement of an Assignment Agreement consistent with the terms of the Clean Energy Purchase Contract.

3. **Representations, Warranties, and Covenants.**

(a) CPA agrees that it shall provide a true, complete, and correct copy to J. Aron of any PPA to be assigned pursuant to an Assignment Agreement.

(b) Each Party represents to the other:

(i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

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<sup>1</sup> SM NTD: Clauses (ii) and (iii) remain under CPA's review.

- (ii) **Powers.** It has the power to execute, deliver, and perform its obligations under this Letter Agreement, the Assignment Agreement, and any other documentation to which it is a party relating to this Letter Agreement and the Assignment Agreement, and it has taken all necessary action to authorize such execution, delivery and performance.
- (iii) **No Violation or Conflict.** Such execution, delivery and performance of this Letter Agreement and the Assignment Agreement and the consummation of the transactions contemplated hereby and thereby, including the incurrence by such Party of its obligations under this Letter Agreement and the Assignment Agreement, will not result in any violation of, or conflict with; (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any government agency, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.
- (iv) **Consents.** All consents, approvals, orders or authorizations of; registrations, declarations, filings or giving of notice to; obtaining of any licenses or permits from; or taking of any other action with respect to, any Person or Government Agency, that are required to have been obtained or made by such Party with respect to this Letter Agreement and Assignment Agreement and the transactions contemplated hereby and thereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (v) **Obligations Binding.** Its obligations under this Agreement and the Assignment Agreement constitute its legal, valid, and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).
- (vi) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and the Assignment Agreement and as to whether this Agreement and the Assignment Agreement are appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the

other Parties as investment advice or as a recommendation to enter into this Agreement or the Assignment Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement and the Assignment Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement and the Assignment Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by the applicable parties, considers this Agreement and the Assignment Agreement to be legally enforceable contracts. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement or the Assignment Agreement.

- (vii) ***Assessment and Understanding.*** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions, and risks of this Agreement and the Assignment Agreement. It is also capable of assuming, and assumes, the risks of this Agreement and the Assignment Agreement.
- (viii) ***Status of Parties.*** Neither of Parties is acting as a fiduciary for or an adviser to the other in respect of this Agreement or the Assignment Agreement.

#### 4. **Governing Law, Jurisdiction, Waiver of Jury Trial**

(a) **Governing Law.** This Letter Agreement and the rights and duties of the parties under this Letter 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 CPA to enter into and perform its obligations under this Letter Agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Southern District of California sitting in the city and county of Los Angeles.

(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 Letter Agreement.

***[Signature Pages to Follow]***

Very truly yours,

**J. ARON**

J. ARON & COMPANY LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGED, ACCEPTED AND AGREED TO as of the date first set forth above:

**CPA**

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**Assignment Agreements**

[To come.]

## CUSTODIAL AGREEMENT

This Agreement (this “Agreement”) is made and entered into as of [\_\_\_\_], 2022, by and among Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), J. Aron & Company LLC, a New York limited liability company (“J. Aron”), Aron Energy Prepay 14 LLC, a Delaware limited liability company (“Prepay LLC”), California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended) (defined below) (the “Issuer”), and [\_\_\_\_], a [\_\_\_\_], (the “Custodian” and together with CPA, J. Aron, Prepay LLC, and Issuer, the “Parties”).

### RECITALS

WHEREAS, Issuer is issuing its [Clean Energy Project Revenue Bonds, Series 2022 (Green Bonds – Climate Bond Certified)] (the “Bonds”) pursuant to the Trust Indenture, dated as of [\_\_\_\_], 2022 (the “Bond Indenture”) between Issuer and [\_\_\_\_], in its capacity as trustee under the Bond Indenture (the “Trustee”); and

WHEREAS, Prepay LLC and Issuer are entering into that certain Master Power Supply Agreement, dated as of [\_\_\_\_], 2022 (the “Master Power Supply Agreement”); and

WHEREAS, in connection with the execution of the Master Supply Agreement, Prepay LLC and J. Aron are entering into an Electricity Purchase, Sale and Service Agreement, dated as of [\_\_\_\_], 2022 (the “Electricity Sale and Service Agreement”); and

WHEREAS, in connection with the execution of the Master Supply Agreement, Issuer and CPA are entering into a Clean Energy Purchase Contract, dated as of [\_\_\_\_], 2022 (the “Clean Energy Purchase Contract” and together with the Master Power Supply Agreement and the Electricity Sale and Service Agreement, the “Clean Energy Prepay Agreements”); and

WHEREAS, prior to the commencement of deliveries under the Clean Energy Prepay Agreements, J. Aron, Issuer and CPA will enter into Assignment Agreements (the “Assignment Agreements”, which definition shall include any new Assignment Agreement identified by J. Aron’s delivery of an updated Exhibit A consistent with Section 3(b)) with the sellers under certain power purchase agreements (each, individually, a “PPA Seller” and collectively the “PPA Sellers”, and which definitions shall include any new PPA Seller identified by J. Aron’s delivery of an updated Exhibit A consistent with Section 3(b)), pursuant to which CPA will partially assign its rights and obligations under the Assigned PPAs (as defined in the Clean Energy Purchase Contract) to J. Aron; and

WHEREAS, the Parties propose to enter into this Custodial Agreement in order to administer payments to be received by the PPA Sellers under the Assigned PPAs.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Defined Terms.

Any capitalized term used herein and not otherwise defined herein (including in the recitals) shall have the meaning assigned to such term in the Clean Energy Purchase Contract. The following additional terms, when used in this Agreement (including the preamble or recitals to this Agreement) and identified by the capitalization of the first letter thereof, have the respective meanings set forth below, unless the context otherwise requires:

“CPA Gross Payment” means, in respect of any Monthly PPA Invoice, an amount determined by CPA as the positive result, if any, of (a) all amounts owed to the relevant PPA Seller in respect of such Monthly PPA Invoice (determined without respect to the PPA Seller Net Payment Obligation), less (b) the J. Aron Prepay Payment; provided, for clarity, that the CPA Gross Payment (i) shall be deemed to be paid to the relevant PPA Seller on behalf of J. Aron to the extent it relates to any Assigned Product, and (ii) otherwise shall be deemed to be paid to the relevant PPA Seller on behalf of CPA.

“CPA Net Payment” means, in respect of any Monthly PPA Invoice, an amount determined by CPA as the positive result, if any, of (a) the CPA Gross Payment, less (b) the PPA Seller Net Payment Obligation.

“J. Aron Fixed Payment” means, in respect of each Assigned PPA and each Month in an Assignment Period thereunder, the amount set forth for such Assigned PPA and Month on Exhibit B hereto.

“J. Aron Prepay Payment” means, in respect of each Monthly PPA Invoice, an amount determined by CPA as the lesser of (a) the J. Aron Fixed Payment for the relevant Month and Assigned PPA, and (b) the actual quantity of Assigned Energy reflected in such Monthly PPA Invoice multiplied by the contract price then in effect with respect to Energy in the relevant Assigned PPA; provided that the J. Aron Prepay Payment shall be reduced by the face amount of any Receivable (as defined in the Electricity Sale and Service Agreement) that is delivered by J. Aron to the Custodian pursuant to Section 4(f); provided further that the J. Aron Prepay Payment will be determined without regard to any PPA Seller Net Payment Obligation.

“J. Aron Resettlement Payment” means, in respect of any Monthly PPA Invoice that (a) is delivered after the delivery of the Billing Statement under the Clean Energy Purchase Contract for such Month and (b) reflects a quantity of Energy less than the Assigned Prepay Quantity was delivered in such Month under the relevant Assigned PPA, an amount equal to the product of (x) the Assigned Prepay Quantity for such Month minus the Assigned Quantity actually delivered under the relevant Assigned PPA, multiplied by (y) the applicable APC Contract Price.

“Monthly PPA Payment” means, in respect of any Monthly PPA Invoice, an amount determined by CPA as the total amount to be withdrawn from the Assigned PPA Payments Account by the Custodian and paid to the relevant PPA Seller in respect of such Monthly PPA Invoice, which shall equal the total net amount due to such PPA Seller in respect of such Monthly PPA Invoice and shall consist of the following components:

- (a) The J. Aron Prepay Payment, which shall be deemed to be paid to the relevant PPA Seller on behalf of J. Aron in respect of Assigned Energy; and

(c) the CPA Net Payment.

“PPA Seller Gross Payment” means, in respect of any Monthly PPA Invoice, any amounts owed by the relevant PPA Seller as reflected in such Monthly PPA Invoice that are required by the terms of the Assigned PPA to be gross settled.

“PPA Seller Net Payment Obligation” means, in respect of any Monthly PPA Invoice, an amount determined by CPA as the result of (a) the total amount owed by the relevant PPA Seller as reflected in such Monthly PPA Invoice, including any amounts that have been netted or set-off against amounts owed to such PPA Seller, minus (b) the PPA Seller Gross Payment; provided, for clarity, that the PPA Seller Net Payment Obligation shall be deemed to be paid to CPA and credited against the CPA Gross Payment thereby resulting in the CPA Net Payment required to be made by CPA hereunder.

Section 2. Appointment of Custodian. CPA, J. Aron, Prepay LLC, and Issuer hereby appoint [ ] as Custodian under this Agreement, with such rights and obligations as are specifically set forth herein. The Custodian hereby accepts such appointment under the terms and conditions set forth herein.

Section 3. Payment Instructions to Custodian; Assigned PPA Exhibits.

(a) No later than five Business Days following receipt of an invoice from a PPA Seller in respect of any Month in an Assignment Period (a “Monthly PPA Invoice”), CPA shall deliver a statement (the “Monthly Statement”) showing each of the following (based on the information provided by the relevant PPA Seller in the Monthly PPA Invoice) to each of the Parties hereto:

- (i) the J. Aron Prepay Payment;
- (ii) the J. Aron Resettlement Payment;
- (iii) the CPA Gross Payment;
- (iv) the CPA Net Payment;
- (v) the PPA Seller Gross Payment;
- (vi) the PPA Seller Net Payment Obligation;
- (vii) the Monthly PPA Payment;

(viii) the “Monthly PPA Invoice Payment Date”, which shall be the last Business Day on which payment on such Monthly PPA Invoice may be made before any incremental interest arises thereon or any default or breach arises under the relevant Assigned PPA; and

(ix) the “Custodial Agreement Payment Date,” which shall be two Business Days preceding the Monthly PPA Invoice Payment Date.

Provided that CPA shall deliver an updated Monthly Statement within five Business Days following agreement by CPA and any PPA Seller to an adjustment to a Monthly PPA Invoice to the extent that such adjustment is agreed upon prior to the date that is 10 days prior to the Monthly PPA Invoice Date; provided furthermore that the Parties acknowledge and agree that any adjustments agreed upon with respect to a Monthly PPA Invoice after the date specified in the foregoing provision shall be resolved solely between CPA and the relevant PPA Seller as provided in the Assignment Agreements.

(b) J. Aron shall notify CPA and each other Party promptly, but in no event more than three (3) Business Days, following CPA's delivery of a Monthly Statement if J. Aron believes any information included on such Monthly Statement is incorrect. Following receipt and verification of the information included in any such notice from J. Aron, CPA shall, to the extent appropriate and in consultation with J. Aron, issue a corrected Monthly Statement to all Parties. J. Aron and each other Party hereto acknowledges and agrees that (i) CPA is calculating the Monthly Statement only for convenience of the Parties, (ii) the purpose of this Agreement is solely to determine amounts to be paid by CPA and J. Aron under separate contracts, and (iii) none of CPA, J. Aron nor any other Party hereto will have any liability whatsoever with respect to any action taken or omitted by it under this Agreement (but without prejudice to an express payment obligation arising under another contract), including as a result of any failure by CPA to timely or properly calculate any amount to be included in a Monthly Statement. Without limiting the foregoing, J. Aron acknowledges that it will have an opportunity to review and comment on each calculation and date included in a Monthly Statement (and shall be aware if such Monthly Statement has not been timely delivered) and CPA will not be responsible in any way for any damages, costs, liabilities, loss of use or any other claims related to an insufficient or late payment under an Assigned PPA as a result of any deficiencies in any Monthly Statement.

(c) Promptly following the execution of the initial Assignment Agreements, J. Aron shall deliver Exhibit A to the other Parties hereto, which will set forth certain information regarding the Assigned PPAs as of the date hereof, including the Assignment Periods for each Assigned PPA, the Assigned Notional Quantities, the PPA Sellers thereunder and the payment instructions for payments to the PPA Sellers. Exhibit B to this Agreement sets forth the J. Aron Fixed Payments. J. Aron shall deliver an updated Exhibit A or Exhibit B, as applicable, to each of the other Parties hereto to reflect any changes to the information set forth therein.

Section 4. Assigned PPA Payments Account.

(a) With respect to certain payments required to be made by J. Aron, CPA and the PPA Sellers with respect to the Assigned PPAs, there is hereby established with the Custodian the following custodial account: a payments account designated as the "[CCCFA (CPA Proj) 2022 PPA Cust]", bearing Custodian's Account No. [ ] (the "Assigned PPA Payments Account"), and all payments made by J. Aron and CPA hereunder shall be wired to such Assigned PPA Payments Account:

[ ]  
ABA: [ ]  
FBO: [ ]  
Acct: [ ]

FFC: [ ] – [CCCFA (CPA Proj) 2022 PPA Cust]  
Address: [ ]  
[ ]

(b) J. Aron shall pay the J. Aron Prepay Payment and any J. Aron Resettlement Payment into the Assigned PPA Payments Account, in respect of each Monthly Statement on the relevant Custodial Agreement Payment Date set forth in such statement. To the extent that (i) a J. Aron Prepay Payment and a J. Aron Resettlement Payment are due and (ii) J. Aron pays some portion of such amounts but less than the total amount due, J. Aron's partial payment shall be applied first to the J. Aron Prepay Payment. In addition, the Custodian agrees to promptly notify CPA if it does not receive the J. Aron Prepay Payment or any J. Aron Resettlement Payment from J. Aron on the Custodial Agreement Payment Date, and in such case CPA may elect in its sole discretion to make the J. Aron Prepay Payment and/or J. Aron Resettlement Payment to the Custodian for purposes of satisfying the Monthly PPA Payment (in which case CPA will have a reimbursement claim against Issuer under Section 6.4 of the Clean Energy Purchase Contract).

(c) CPA shall pay the CPA Net Payment into the Assigned PPA Payments Account in respect of each Monthly Statement on the relevant Custodial Agreement Payment Date set forth in such statement.

(d) The PPA Sellers, as applicable, have agreed to pay any PPA Seller Gross Payment into the Assigned PPA Payments Account on or before the relevant Monthly PPA Invoice Payment Date.

(e) The Custodian shall withdraw and apply amounts received under this Section 4 as follows:

(i) any J. Aron Prepay Payment received from J. Aron (including any payment made by CPA on J. Aron's behalf pursuant to the last sentence of Section 4(b)) and any CPA Net Payment received from CPA shall be applied to the payment of the Monthly PPA Payment to each PPA Seller in respect of each Monthly Statement on the relevant Monthly PPA Invoice Payment Date pursuant to the payment instructions set forth on Exhibit A; provided that if amounts on deposit in the Assigned PPA Payment Account are insufficient to pay the entire Monthly PPA Payment on such date, the Custodian shall (i) withdraw and pay to such PPA Seller the entire remaining balance of the Assigned PPA Payment Account and (ii) notify such PPA Seller of the amounts received for such Month from each of J. Aron and CPA consistent with such PPA Seller's contact information provided in Exhibit A; and

(ii) any J. Aron Resettlement Payment received from J. Aron and any PPA Seller Gross Payment received from a PPA Seller shall be remitted to CPA on the relevant Monthly PPA Invoice Payment Date pursuant to CPA's payment instructions set forth on Exhibit C.

(f) Amounts deposited in the Assigned PPA Payments Account shall be held in trust for the benefit of CPA until applied as set forth in Section 4(e) and Section 12, as applicable, and there is hereby granted to CPA a lien on and security interest in the Assigned PPA Payments

Account pending such application. The Custodian shall not be required to comply with any orders, demands, or other instructions from CPA with respect to the Assigned PPA Payments Account, including, without limitation, items presented for payment, or any order or instruction directing the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, and CPA agrees that prior to the termination of this Agreement in accordance with the terms hereof, it shall have no right to direct the disposition of funds or other assets held in or credited to the Assigned PPA Payments Account, or to withdraw or otherwise obtain funds or other assets held in or credited to the Assigned PPA Payments Account, whether by order or instruction to the Custodian or otherwise.

(g) With respect to each Monthly Statement, to the extent J. Aron has purchased Receivables (as defined in the Electricity Sale and Service Agreement) for amounts owed by CPA for the Month to which such Monthly Statement relates, J. Aron may, at its option, (i) notify the Custodian that it intends to transfer all or any portion of such Receivables to the applicable PPA Seller, and (ii) reduce the J. Aron Prepay Payment by the face amount of such Receivables to be transferred. To the extent J. Aron has notified the Custodian of its intent to transfer any such Receivables, J. Aron shall cause such Receivables to be transferred to the relevant PPA Seller not later than the relevant Custodial Agreement Payment Date.

#### Section 5. Custodian; Fees.

(a) The Custodian shall have (i) no liability under any agreement other than this Agreement and (ii) no duty to inquire as to the provisions of any agreement other than this Agreement and the Assigned PPAs. The Custodian may rely upon and shall not be liable for acting or refraining from acting upon any written notice, document, instruction, or request furnished to it hereunder in accordance with the terms hereof and believed by it to be genuine and to have been signed or presented by the proper Party or Parties. The Custodian shall be under no duty to inquire into or investigate the validity, accuracy, or content of any such document, notice, instruction, or request. The Custodian shall have no duty to solicit any payments which may be due to it, or to take any action to compel J. Aron, CPA or a PPA Seller to make the deposits required under Section 4. The Custodian shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines that the Custodian's gross negligence or willful misconduct was the primary cause of any loss to any other Party hereto. In connection with the execution of any of its powers or the performance of any of its duties hereunder, the Custodian may consult with counsel, accountants and other skilled persons selected and retained by it. The Custodian shall not be liable for anything done, suffered, or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons, provided the Custodian exercised due care and good faith in the selection of such person. The permissive rights of the Custodian to take actions enumerated under this Agreement shall not be construed as duties. In the event that the Custodian shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other Parties hereto or by a final order or judgment of a court of competent jurisdiction. The Custodian may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or

obligation with respect to such interpleaded assets or any action or non-action based on such declaratory judgment. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, incidental, or consequential damages, losses or penalties of any kind whatsoever (including but not limited to lost profits), regardless of the form of action. The Custodian shall be responsible only for funds actually received by it for deposit into the Assigned PPA Payments Account, and the Custodian shall not be obliged to advance or risk its own funds to make any payments required hereunder. The Custodian shall have only those duties expressly set forth in this Agreement and no implied duties shall be read into this Agreement against the Custodian. The Parties hereto acknowledge and agree that the Custodian is not a fiduciary by virtue of accepting and carrying out its obligations under this Agreement and has not accepted any fiduciary duties, responsibilities, or liabilities with respect to its services hereunder.

(b) The Issuer agrees to pay the Custodian reasonable compensation for the services to be rendered hereunder, which compensation shall be \$[ ] for each year that this Agreement is in effect. The parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 6. Succession. The Custodian may resign and be discharged from its duties or obligations hereunder by giving not less than 60 days advance notice in writing of such resignation to the other Parties hereto specifying a date when such resignation shall take effect; and such resignation shall take effect upon the day specified in such notice unless a successor shall not have been appointed by the other Parties hereto on such date, in which event such resignation shall not take effect until a successor is appointed. The other Parties hereto shall use their commercially reasonable efforts to make such appointment in a timely fashion, provided that any custodian appointed in succession to the Custodian shall be a bank or trust company organized under the laws of any state or a national banking association and shall have capital stock, surplus and undivided earnings aggregating at least \$50,000,000 and shall be a bank with trust powers or trust company willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Agreement. Any corporation or association into which the Custodian may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the Custodian's corporate trust line of business may be transferred, shall be the Custodian under this Agreement without further act. Notwithstanding the foregoing, if no appointment of a successor Custodian shall be made pursuant to the foregoing provisions of this Section 6 within 60 days after the Custodian has given written notice to the other Parties of its resignation as provided in this Section 6, the Custodian may, in its sole discretion, apply to any court of competent jurisdiction to appoint a successor Custodian. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Custodian.

Section 7. Reimbursement. J. Aron and CPA agree, jointly and severally (subject to the second proviso of this Section 7), to reimburse the Custodian and its directors, officers, agents and employees for any and all loss, liability or expense (including the fees and expenses of in-house or outside counsel and experts and their staffs and all expense of document location, duplication and shipment) arising out of or in connection with (a) its acting as the Custodian under this Agreement, except to the extent that such loss, liability or expense is finally adjudicated to have been caused primarily by the gross negligence or willful misconduct of the Custodian or such director, officer, agent, or employee seeking reimbursement, or (b) its following any instructions

or other directions from J. Aron or CPA, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof; provided, however, that any amounts due under this Section 7 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 13 hereof; provided further, however, that, notwithstanding the joint and several nature of the obligations under this Section 7, any amounts due under clause (b) of this sentence resulting from instructions or directions that are not expressly provided for in this Agreement and are given to the Custodian by only one Party shall be the sole obligation of such Party. The Parties hereto acknowledge that this provision shall survive the resignation or removal of the Custodian or the termination of this Agreement.

Section 8. Taxpayer Identification Numbers; Tax Matters. J. Aron and CPA represent that that their correct taxpayer identification numbers assigned by the Internal Revenue Service or any other taxing authority is set forth on the signature page hereof. Any tax returns or reports required to be prepared and filed in connection with the Assigned PPA Payments Account will be prepared and filed by CPA, and the Custodian shall have no responsibility for the preparation and/or filing of any tax return with respect to any income earned on the Assigned PPA Payments Account. In addition, any tax or other payments required to be made pursuant to such tax return or filing shall be paid by CPA. The Custodian shall have no responsibility for making such payment unless directed to do so by the appropriate authorized Party.

Section 9. Notices. Any notice, demand, statement, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing and shall either be sent by email transmission, courier, or personal delivery (including overnight delivery service) to each of the notice recipients and addresses specified in Exhibit C for the receiving Party. Any such notice, demand, or request shall be deemed to be given (i) when delivered by email transmission, or (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service). Each Party shall have the right, upon 10 days' prior written notice to the other Party, to change its list of notice recipients and addresses in Exhibit C. The Parties may mutually agree in writing at any time to deliver notices, demands, or requests through alternate or additional methods, such as electronic mail. Notwithstanding the foregoing, a Party may at any time notify the others that any notice, demand, statement, or request to it must be provided by email transmission for a specified period of time or until further notice, and any communications delivered by means other than email transmission during the specified period of time shall be ineffective.

Section 10. Miscellaneous. The provisions of this Agreement may be waived, altered, amended, or supplemented, in whole or in part, only by a writing signed by all of the Parties hereto.

(b) Neither this Agreement nor any right or interest hereunder may be assigned in whole or in part by any Party, except as provided in Section 5, without the prior written consent of the other Parties.

(c) 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 New York, without regard to any conflicts of law principle that would direct the application of the laws another jurisdiction.

(d) Each Party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens, or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents 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. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

(e) No Party to this Agreement shall be liable to any other Party hereto for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, floods, strikes, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All signatures of the Parties to this Agreement may be transmitted by facsimile or by digital pdf transmission, and such facsimile or pdf will, for all purposes, be deemed to be the original signature of such Party whose signature it reproduces and will be binding upon such Party.

(g) The Custodian shall not be under any obligation to invest or pay interest on amounts held in the Assigned PPA Payments Account from time to time.

(h) Issuer shall have only such duties under this Agreement as are expressly set forth herein as duties on its part to be performed, and no implied duties shall be read into this Agreement against Issuer.

Section 11. Compliance with Court Orders. In the event that any amount held by the Custodian hereunder shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, the Custodian is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing are binding upon it, whether with or without jurisdiction, and in the event that the Custodian obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree may be subsequently reversed, modified, annulled, set aside or vacated.

Section 12. Term; Winding Up. This Agreement will expire concurrently with the receipt of written notice from CPA, with a copy to the other Parties, that the Clean Energy Purchase Contract has terminated in accordance with its terms. Following the Custodian's payment of any Monthly PPA Payments due in respect of the final month of commodity deliveries prior to such a termination, any remaining balance in the Assigned PPA Payments Account shall be paid to CPA.

Section 13. Indemnification. J. Aron and CPA, jointly and severally, agree to protect, indemnify, defend and hold harmless, the Custodian, and affiliates, and each person who controls the Custodian (and each of their respective directors, officers, agents, and employees) from and against all claims, losses, liabilities, actions, suits, costs, judgments, and expenses (including court

costs and reasonable attorneys' fees) arising from its acting as Custodian hereunder (including, for the avoidance of doubt, any costs, expenses, and reasonable attorneys' fees incurred in enforcing any payment obligation of an indemnifying Party), except for any claim, damage or loss resulting from the gross negligence or willful misconduct of the Custodian; provided, however, that any amounts due under this Section 13 shall not duplicate any other amounts due under this Agreement, including without limitation amounts due under Section 7 hereof. The obligations of this Section 13 shall survive any resignation or removal of the Custodian and the termination of this Agreement. In addition, notwithstanding anything herein to the contrary, the Custodian and Issuer shall have all of the rights (including the indemnification rights), benefits, privileges and immunities under this Agreement as are granted to Issuer under the Bond Indenture, all of which are incorporated, mutatis mutandis, into this Agreement.

Section 14. Limitation of Liability. Notwithstanding anything to the contrary herein, all obligations of the Issuer under this Agreement, including without limitation all obligations to make payments of any kind whatsoever, are special, limited obligations of the Issuer, payable solely from the Trust Estate (as such term is defined in the Bond Indenture) as and to the extent provided in the Bond Indenture, including with respect to Operating Expenses (as such term is defined in the Bond Indenture). The Issuer shall not be required to advance any moneys derived from any source other than the Revenues (as such term is defined in the Bond Indenture) and other assets pledged under the Bond Indenture for any of the purposes in this Agreement mentioned. Neither the faith and credit of the Issuer nor the taxing power of the State of California or any political subdivision thereof is pledged to payments pursuant to this Agreement. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reasons of or in connection with this Agreement, except solely to the extent Revenues (as such term is defined in the Bond Indenture) are received for the payment thereof and may be applied therefor pursuant to the terms of the Bond Indenture.

Section 15. Patriot Act. J. Aron and CPA acknowledge that the Custodian is subject to federal laws, including the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which the Custodian must obtain, verify, and record information that allows the Custodian to identify J. Aron and CPA. Accordingly, prior to opening the Assigned PPA Payments Account described in Section 3 of this Agreement, the Custodian will ask J. Aron and CPA to provide certain information including but not limited to name, physical address, tax identification number and other information that will help the Custodian identify and verify J. Aron's and CPA's identities, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. J. Aron and CPA agree that the Custodian cannot open any account hereunder unless and until the Custodian verifies J. Aron's and CPA's identities in accordance with its CIP.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Taxpayer ID Number: \_\_\_\_\_

J. ARON & COMPANY LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Taxpayer ID Number: \_\_\_\_\_

ARON ENERGY PREPAY 14 LLC

By: J. Aron & Company LLC, its  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[CUSTODIAN]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CALIFORNIA COMMUNITY CHOICE  
FINANCING AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**ASSIGNED PPAS**

[To come.]

**EXHIBIT B**

**J. ARON FIXED PAYMENTS**

[To come.]

**EXHIBIT C**

**NOTICE INFORMATION**

**Prepay LLC:**

Aron Energy Prepay 14 LLC  
c/o J. Aron & Company LLC  
200 West Street  
New York, NY 10282  
Email: gs-prepay-notices@gs.com

**J. Aron:**

J. Aron & Company LLC  
200 West Street  
New York, NY 10282  
Email: gs-prepay-notices@gs.com

**Issuer:**

California Community Choice Financing Authority  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Email: seriesanotices@cccfa.org

**CPA:**

Clean Power Alliance  
801 South Grand Avenue, Suite 400  
Los Angeles, CA 90017  
Email: [\_\_\_\_\_]

*CPA Wire Instructions:*

[\_\_\_\_\_]  
[\_\_\_\_\_]  
[\_\_\_\_\_]

Email: [\_\_\_\_\_]

**Custodian:**

[Custodian]  
[\_\_\_\_\_]  
[\_\_\_\_\_]  
Attention: [\_\_\_\_\_]  
Telephone: [\_\_\_\_\_]

**PRELIMINARY OFFICIAL STATEMENT DATED [ \_\_\_\_\_ ], 2022**

**NEW ISSUE – BOOK-ENTRY ONLY**

**RATING: (SEE “RATING” HEREIN)**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings, and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual, or receipt of interest on, the Bonds. See “TAX MATTERS” herein.*

[CCCFA LOGO]

\$[ \_\_\_\_\_ ]\*

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY  
CLEAN ENERGY PROJECT REVENUE BONDS  
SERIES 2022[B] [(GREEN BONDS – CLIMATE BOND CERTIFIED)]**

\$ _____*	\$ _____*	\$ _____*
<b>SERIES 2022[B]-1 [(GREEN BONDS)] (TERM RATE)</b>	<b>SERIES 2022[B]-2 [(GREEN BONDS)] (SIFMA INDEX RATE)</b>	<b>SERIES 2022[B]-3 [(GREEN BONDS)] (SOFR INDEX RATE)</b>

**DATED: Date of Delivery**

**DUE: As shown on the inside cover**

California Community Choice Financing Authority (“CCCFA”) is issuing its Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Green Bonds – Climate Bond Certified) (Term Rate) (the “Series 2022[B]-1 Bonds”), its Clean Energy Project Revenue Bonds, Series 2022[B]-2 (Green Bonds – Climate Bond Certified) (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”) and its Clean Energy Project Revenue Bonds, Series 2022[B]-3 (Green Bonds – Climate Bond Certified) (SOFR Index Rate) (the “Series 2022[B]-3 Bonds” and, together with the Series 2022[B]-1 Bonds and Series 2022[B]-2 Bonds, the “Bonds”), under a Trust Indenture between CCCFA and [ \_\_\_\_\_ ], as Trustee. The Bonds will be issued in book-entry form through the facilities of The Depository Trust Company (“DTC”). Purchases of the Bonds will be made in book-entry form through DTC participants in denominations of \$5,000 or any multiple thereof. Payments of principal of, premium, if any, and interest on the Bonds will be made directly to DTC and will subsequently be disbursed to DTC Participants and thereafter to Beneficial Owners of the Bonds, all as described herein. Capitalized terms used and not otherwise defined on this cover page have the meanings set forth herein.

From their Initial Issue Date to and including [ \_\_\_\_\_ ]\* (the “Initial Interest Rate Period”), the Series 2022[B]-1 Bonds will bear interest in a Term Rate Period, the Series 2022[B]-2 Bonds will bear interest in a SIFMA Index Rate Period and the Series 2022[B]-3 Bonds will bear interest in a SOFR Index Rate Period, as shown on the inside cover page and described herein. During the Initial Interest Rate Period, interest on the Series 2022[B]-1 Bonds is payable semiannually on each [ \_\_\_\_\_ ] 1\* and [ \_\_\_\_\_ ] 1\*, commencing [ \_\_\_\_\_ ] 1, 202[ ]\* and interest on the Series 2022[B]-2 Bonds and the Series 2022[B]-3 Bonds is payable on the first Business Day of each month, commencing on the first Business Day of [ \_\_\_\_\_ ] 202[ ]\*. The Bonds are subject to optional and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds of each Series maturing on [ \_\_\_\_\_ ] 1, 20[ ]\* are subject to mandatory tender for purchase on [ \_\_\_\_\_ ] 1, 20[ ]\* (the “Mandatory Purchase Date”).

[The Bonds have been designated “Green Bonds.” See “DESIGNATION OF BONDS AS GREEN BONDS – CLIMATE BOND CERTIFIED” and Second Party Opinion by \_\_\_\_\_ set forth herein.]

Under the “Clean Energy Project,” Clean Power Alliance of Southern California (the “Project Participant” or “CPA”) anticipates purchasing approximately thirty years of Electricity at a net savings to the costs it would otherwise pay for such Electricity. “Electricity” means energy, renewable energy, renewable energy credits, capacity, and other related products, as further described herein. To effectuate the Clean Energy Project, CCCFA has issued the Bonds, using the proceeds to prepay the costs of the acquisition of Electricity to be delivered over approximately thirty years under a Master Power Supply Agreement (the “Master Power Supply Agreement”), between Aron Energy Prepay 14 LLC, a Delaware limited liability company (the “Electricity Supplier”) and CCCFA. CCCFA will sell all of the Electricity acquired under the Master Power Supply Agreement to the Project Participant under the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”). The Electricity Supplier will meet the electric delivery requirements under the Master Power Supply Agreement through the Electricity Purchase Sale and Service Agreement with J. Aron & Company LLC (“J. Aron”). Under the terms of the Master Power Supply Agreement and the Clean Energy Purchase Contract, the Project Participant can seek to assign existing and future power purchase agreements to J. Aron for ultimate delivery to the Project Participant. J. Aron must consent to any such assignment. As of the date of delivery of the Bonds, the Project Participant will initially enter into limited assignment agreements with J. Aron relating to specific power purchase agreements.

The Electricity Supplier will loan an amount approximately equal to the prepayment it receives from CCCFA to [ \_\_\_\_\_ ] (“[ ]” or the “Funding Recipient”) under a Term Loan Agreement (the “Funding Agreement”), and will enter into the Electricity Purchase, Sale and Service Agreement with J. Aron. Under the Electricity Purchase, Sale and Service Agreement, J. Aron will sell Electricity to the Electricity Supplier so that the Electricity Supplier can meet its obligations to CCCFA under the Master Power Supply Agreement and CCCFA can meet its

\* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment without notice. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification.

obligations to the Project Participant under the Clean Energy Purchase Contract. The monthly payments made by the Funding Recipient under the Funding Agreement will provide amounts sufficient to enable the Electricity Supplier to meet its payment obligations under the Electricity Purchase, Sale and Service Agreement.

THE PAYMENT OF THE BONDS IS NOT GUARANTEED BY THE ELECTRICITY SUPPLIER, J. ARON, THE GOLDMAN SACHS GROUP, INC., [THE FUNDING RECIPIENT], THE UNDERWRITER, CCCFA OR ITS MEMBERS, OR THE PROJECT PARTICIPANT OR ITS MEMBERS. THE BONDS ARE NOT AN OBLIGATION OF THE STATE OF CALIFORNIA OR ANY POLITICAL SUBDIVISION, THE MEMBERS OF CCCFA OR THE PROJECT PARTICIPANT OR ITS MEMBERS, AND NEITHER THE FAITH AND CREDIT OF CCCFA NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO PAYMENTS PURSUANT TO THE INDENTURE OR THE BONDS. THE BONDS ARE SPECIAL AND LIMITED OBLIGATIONS OF CCCFA, PAYABLE SOLELY FROM THE TRUST ESTATE, AS AND TO THE EXTENT PROVIDED IN THE INDENTURE.

This Official Statement describes the Bonds only during the Initial Interest Rate Period and must not be relied upon if the Bonds are converted to any other interest rate period. The purchase and ownership of the Bonds involve investment risk and may not be suitable for all investors. This cover page is not intended to be a summary of the terms of or the security for the Bonds. Investors are advised to read this Official Statement in its entirety to obtain information essential to the making of an informed investment decision with respect to the Bonds, giving particular attention to the matters discussed under "INVESTMENT CONSIDERATIONS" herein.

*The Bonds are offered, when, as and if issued by CCCFA and accepted by the Underwriter, subject to the approval of validity by Orrick, Herrington & Sutcliffe LLP, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for CCCFA by its General Counsel; for the Project Participant by Chapman and Cutler LLP; for the Electricity Supplier by Sheppard, Mullin, Richter & Hampton LLP; for GSG by Sullivan & Cromwell LLP; for [the Funding Recipient] by [\_\_\_\_\_]; and for the Underwriter by Nixon Peabody LLP. It is expected that the Bonds will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2022.*

**Goldman Sachs & Co. LLC**

Dated: \_\_\_\_\_, 2022

\$[\_\_\_\_\_]\*

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY  
CLEAN ENERGY PROJECT REVENUE BONDS  
SERIES 2022[B] [(GREEN BONDS – CLIMATE BOND CERTIFIED)]**

**MATURITY DATES, PRINCIPAL AMOUNTS, INTEREST RATES, YIELDS AND CUSIPS**

\$ \_\_\_\_\_ **SERIES 2022[B]-1 BONDS  
(TERM RATE)**

MATURITY [_____] 1*	PRINCIPAL AMOUNT	INTEREST RATE	YIELD	CUSIP <sup>1</sup>
------------------------	---------------------	------------------	-------	--------------------

\$ \_\_\_\_\_ % Term Bond due [\_\_\_\_\_] 1, 20[\_\_\_\_\_] 2, Yield: \_\_\_\_\_ %, CUSIP<sup>1</sup> \_\_\_\_\_

\$ \_\_\_\_\_ **SERIES 2022[B]-2 BONDS  
(SIFMA INDEX RATE)**

MATURITY DATE [_____] 2	INDEX SIFMA Index	APPLICABLE SPREAD <sup>3</sup> __ basis points	CUSIP <sup>1</sup>
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\$ \_\_\_\_\_ **SERIES 2022[B]-3 BONDS  
(SOFR INDEX RATE)**

MATURITY DATE [_____] 2	APPLICABLE FACTOR <sup>4</sup>	INDEX SOFR Index	APPLICABLE SPREAD <sup>3</sup> __ basis points	CUSIP <sup>1</sup>
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\* Preliminary, subject to change

<sup>1</sup> CUSIP® is a registered trademark of the American Bankers Association. The CUSIP numbers listed above have been provided by CUSIP Global Services, managed by FactSet Research Systems Inc. on behalf of The American Bankers Association, and are included solely for the convenience of bondholders only. CCCFA and the Underwriter make no representation with respect to such numbers or undertake any responsibility for their accuracy. The CUSIP numbers are subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to a refunding in whole or in part of the Bonds.

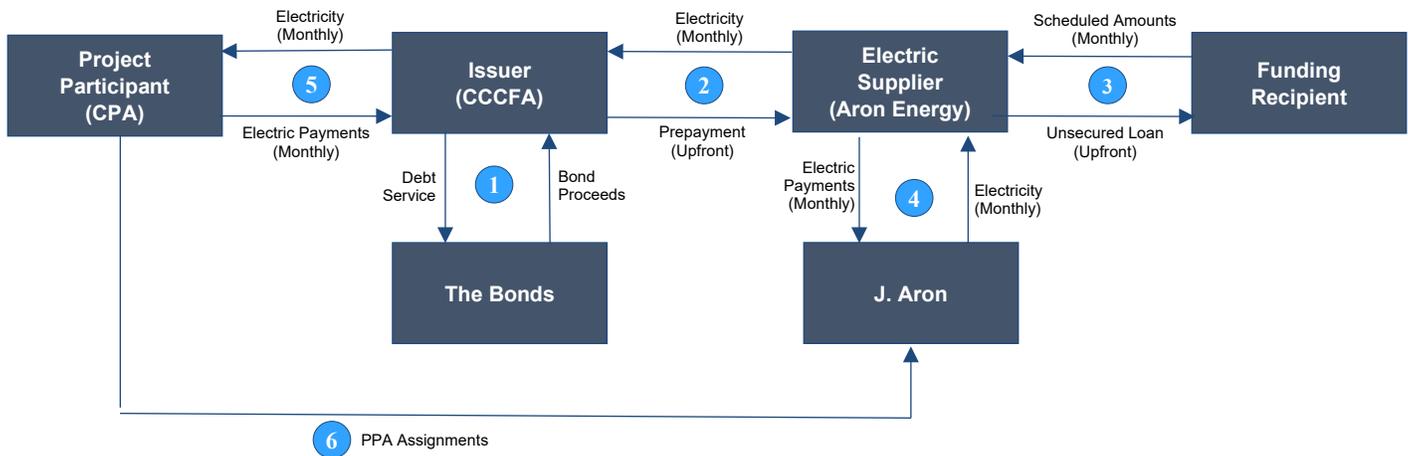
<sup>2</sup> The Bonds of each Series maturing on [\_\_\_\_\_] 1, 20[\_\_\_\_\_] are required to be tendered for purchase on [\_\_\_\_\_] 1, 20[\_\_\_\_\_] 1.

<sup>3</sup> Applicable Spread means, (i) with respect to the Series 2022[B]-2 Bonds, the margin added to the SIFMA Municipal Swap Index to determine the SIFMA Index Rate and (ii) with respect to the Series 2022[B]-3 Bonds, the margin added to the product of the Applicable Factor and the SOFR Index to determine the Secured Overnight Financing Rate. The Applicable Spread will remain constant for the duration of the initial SIFMA Index Rate Period and the initial SOFR Index Rate Period. See "THE BONDS – Series 2022[B]-2 Bonds" and "Series 2022[B]-3 Bonds" herein.

<sup>4</sup> Applicable Factor means the percentage or factor of the SOFR Index used to calculate the SOFR Index Rate for the Series 2022[B]-3 Bonds. The Applicable Factor will remain constant for the duration of the initial SOFR Index Rate Period. See "THE BONDS – Series 2022[B]-3 Bonds" herein.

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY  
 CLEAN ENERGY PROJECT REVENUE BONDS  
 SERIES 2022[B] [(GREEN BONDS – CLIMATE BOND CERTIFIED)]**

**PREPAID COMMODITY TRANSACTION STRUCTURE  
 (EXPECTATION FOR INITIAL DELIVERY PERIOD – ASSIGNED PPAS IN EFFECT)**



1. **Debt Issuance:** California Community Choice Financing Authority (“CCCFA”) issues the Bonds to fund the prepayment of electric energy, renewable energy, renewable energy credits, capacity, and other related products (collectively, “Electricity”), pay capitalized interest, fund a debt service reserve, a commodity swap reserve, and pay costs of issuance.
2. **Prepayment:** CCCFA will apply bond proceeds to prepay Aron Energy Prepay 14 LLC (the “Electricity Supplier”) for approximately thirty years of Electricity deliveries. Under the Master Power Supply Agreement, the Electricity Supplier will be obligated to (a) deliver Electricity to CCCFA during the Delivery Period; (b) make payments for any Prepaid Electricity not delivered or taken; and (c) make a Termination Payment upon a Termination Payment Event as described herein.
3. **Unsecured Loan:** The Electricity Supplier, as lender, and [FUNDING RECIPIENT], as Funding Recipient, will enter into an [unsecured loan] (the “Funding Agreement”) pursuant to which the Electricity Supplier will lend to [the Funding Recipient] an amount approximately equal to the proceeds of the prepayment received by the Electricity Supplier under the Master Power Supply Agreement. The Scheduled Amounts payable under the Funding Agreement replicate the Electricity Supplier’s monthly prepaid Electricity purchase obligations during the Delivery Period. The Funding Agreement will provide a fixed interest rate for a period equal to the Initial Interest Rate Period on the Bonds and will have a final maturity at the end of such period.
4. **Electricity Supply:** The Electricity Supplier will procure the Electricity from J. Aron & Company LLC (“J. Aron”). The Electricity Supplier will enter into a long-term Electricity Purchase, Sale and Service Agreement with J. Aron whereby the Electricity Supplier will purchase Electricity from J. Aron during the Delivery Period that matches the delivery quantities and terms under the Master Power Supply Agreement. The Electricity Supplier will pay for the Electricity monthly in arrears. J. Aron’s payment obligations under the Electricity Purchase, Sale and Service Agreement will be guaranteed by GSG.

5. **Project Participant:** Under the Clean Energy Purchase Contract, CCCFA will sell to the Project Participant all of the prepaid Electricity delivered by the Electricity Supplier at the Contract Price (“*Prepaid Electricity*”). So long as sufficient Assigned PPAs are assigned to J. Aron, the Project Participant must pay for all Electricity actually delivered under the Clean Energy Purchase Contract, provided that neither the Project Participant nor CCCFA has requested the Prepaid Electricity be remarketed, and if the amount of Electricity actually delivered to the Project Participant is less than the scheduled Prepaid Electricity, the Electricity Supplier will make a cash payment to CCCFA, subject to the terms of the Master Power Supply Agreement and the Clean Energy Purchase Contract. The amounts payable by the Project Participant and the Electricity Supplier are calculated to provide sufficient revenues (plus investment income from the Debt Service Account) to enable CCCFA to make the required scheduled deposits to the Debt Service Account.
6. **Assigned PPAs:** The Project Participant will initially assign certain rights, title, and interest as purchaser under [two (2)] power purchase agreements (each an “*Initially Assigned PPA*”) to J. Aron, which are anticipated to deliver a quantity of Electricity that allows for J. Aron to meet the Electricity Supplier’s Prepaid Electricity obligations during the Initial Interest Rate Period. J. Aron will use a portion of the Electricity delivered under the Initially Assigned PPAs to meet its obligation to deliver Electricity under the Electricity Purchase Sale and Service Agreement (any additional Electricity is not pledged as part of the Trust Estate). Through this structure, the Project Participant anticipates being able to procure long-term clean energy electricity supplies at favorable prices.
7. **Interest Rate Swap.** CCCFA will enter into the Interest Rate Swap with J. Aron under which CCCFA will pay a fixed rate (semiannually) and receive a floating rate (monthly) with respect to the interest on any Index Rate Bonds that are issued. [GS to provide updated boxes reflecting interest rate swap].

**Electricity Remarketing and Commodity Swaps:** If the Project Participant does not require all or any portion of the Electricity that it is obligated to purchase under the Clean Energy Purchase Contract, or if it is unable to assign sufficient eligible power purchase agreements to J. Aron, it may request the Electricity Supplier remarket such portion of the Electricity to another purchaser. CCCFA will enter into commodity price swaps, which cash flows will remain inactive while Electricity is being delivered pursuant to the Assigned PPAs. In the event of a remarketing and Electricity is not delivered pursuant to the Assigned PPAs, the Electricity Supplier will deliver market power to CCCFA. Under the CCCFA Commodity Swaps, if active, CCCFA will pay amounts based on the daily market price and receive fixed amounts from the Commodity Swap Counterparties to ensure its payment obligations are market based while ensuring that sufficient revenues are available to meet its fixed debt service obligations. The Electricity Supplier will enter into mirror swaps with the same Commodity Swap Counterparties to meet its requirements for market-referenced pricing to fulfill its delivery obligations. See “THE MASTER POWER SUPPLY AGREEMENT – *Electricity Remarketing*” herein for further details on the timing, triggers, and process of electricity remarketing.

The information contained in this Official Statement has been obtained from CCCFA, the Project Participant, the Electricity Supplier, J. Aron, GSG, [the Funding Recipient], the Commodity Swap Counterparties, DTC and other sources believed to be reliable. This Official Statement is submitted in connection with the sale of the securities described herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement speaks only as of its date and the information contained in this Official Statement is subject to change without notice and neither the delivery of this Official Statement nor any sale made by means of it shall, under any circumstances, create any implication that there have not been changes in the affairs of any party since the date of this Official Statement.

No broker, dealer, salesman or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such information or representations must not be relied upon as having been authorized by CCCFA or the Underwriter. This Official Statement does not constitute an offer or solicitation in any jurisdiction in which such offer or solicitation is not authorized, or in which the person making such offer or solicitation is not qualified to do so or to any person to whom it is unlawful to make such offer or solicitation.

The Bonds will not be registered under the Securities Act of 1933, as amended, and will not be listed on any stock or other securities exchange. Neither the Securities and Exchange Commission nor any other federal, state, municipal or other government entity or agency has or will have passed upon the adequacy of this Official Statement or, except for CCCFA, approved the Bonds for sale.

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In making an investment decision, investors must rely on their own examination of the terms of the offering, including the merits and risks involved. These securities have not been recommended by any federal or state securities commission or regulatory authority. No commission or authority has confirmed the accuracy or determined the adequacy of this document.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY ENGAGE IN TRANSACTIONS THAT STABILIZE, MAINTAIN OR OTHERWISE AFFECT THE MARKET PRICES OF THE BONDS. SUCH TRANSACTIONS, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

References to web site addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such web sites and the information or links contained therein are not incorporated into, and are not part of, this Official Statement for purposes of, and as that term is defined in, Rule 15c2-12 of the United States Securities and Exchange Commission.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used, such as "plan," "project," "expect," "anticipate," "intend," "believe," "estimate," "budget" or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. CCCFA does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions, or circumstances on which such statements are based occur.

**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**

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Clean Power Alliance of Southern California  
East Bay Community Energy Authority  
Marin Clean Energy  
Pioneer Community Energy  
Silicon Valley Clean Energy Authority

**PROJECT PARTICIPANT**

Clean Power Alliance of Southern California

**BOND COUNSEL**

ORRICK HERRINGTON & SUTCLIFFE LLP

**PROJECT PARTICIPANT COUNSEL**

CHAPMAN AND CUTLER LLP

**TRUSTEE**

[ \_\_\_\_\_ ]

**FINANCIAL ADVISOR**

MUNICIPAL CAPITAL MARKETS GROUP, INC.

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**OFFICIAL STATEMENT**

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**CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY  
CLEAN ENERGY PROJECT REVENUE BONDS  
SERIES 2022[B] [(GREEN BONDS – CLIMATE BOND CERTIFIED)]**

**INTRODUCTION**

This Official Statement, which includes the cover page and appendices attached hereto, contains information concerning (a) California Community Choice Financing Authority (“CCCFA”), (b) CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-1 [(Green Bonds – Climate Bond Certified)], CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-2 (Green Bonds – Climate Certified) (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”), and CCCFA’s Clean Energy Project Revenue Bonds, Series 2022[B]-3 (Green Bonds – Climate Bond Certified) (SOFR Index Rate) (the “Series 2022[B]-3 Bonds” and, together with the Series 2022[B]-1 Bonds and the Series 2022[B]-2 Bonds, the “Bonds”), being issued in the aggregate principal amount of \$[\_\_\_\_\_]\* and (c) the Clean Energy Project (defined below) being financed with proceeds of the Bonds. Capitalized terms used herein have the meanings shown in APPENDIX C.

*California Community Choice Financing Authority*

California Community Choice Financing Authority is a joint powers agency formed by Marin Clean Energy, Central Coast Community Energy, East Bay Community Energy Authority, Silicon Valley Clean Energy Authority, Clean Power Alliance of Southern California (“CPA” or the “Project Participant”), and Pioneer Community Energy (collectively, the “Members”), each a community choice aggregator organized and existing under the laws of the State of California (the “State”). CCCFA is organized and existing pursuant to the laws of the State with the power to issue the Bonds and enter into the transaction documents described herein. CCCFA is authorized to exercise the common powers of its Members and to undertake all actions permitted by Joint Exercise of Powers Act, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”), in connection with the Clean Energy Project, including the purchase of the electricity and the sale thereof to the Project Participant (defined below). See “CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY” and “COMMUNITY CHOICE AGGREGATORS” herein.

*Clean Power Alliance of Southern California*

CCCFA has entered into an electricity supply agreement (the “Clean Energy Purchase Contract”) for the sale of Electricity to be delivered under the Clean Energy Project with the Project Participant, a joint powers authority and a community choice aggregator duly organized and existing under the laws of the State of California.

CPA was formed in 2017 as a community choice aggregator (“CCA”) and launched service to customers in February 2018. CPA’s mission, among others, is to address climate change by reducing energy-related greenhouse gas emissions by serving customers with renewable energy at competitive rates, providing local economic benefits such as jobs creation and workforce development opportunities, and offering energy programs to its customers and communities.

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\* Preliminary, subject to change.

CPA provides CCA service to a service territory that covers 32 member communities across Southern California includes the Counties, Cities and Towns of Agoura Hills, Alhambra, Arcadia, Beverly Hills, Calabasas, Camarillo, Carson, Claremont, Culver City, Downey, Hawaiian Gardens, Hawthorne, unincorporated Los Angeles County, Malibu, Manhattan Beach, Moorpark, Ojai, Oxnard, Paramount, Redondo Beach, Rolling Hills Estates, Santa Monica, Sierra Madre, Simi Valley, South Pasadena, Temple City, Thousand Oaks, Ventura, unincorporated Ventura County, West Hollywood, Westlake Village, and Whittier. CPA may expand to serve additional cities in Los Angeles or Ventura Counties in the future. During the Delivery Period, the Project Participant will use the electricity it purchases from CCCFA for sale to retail customers located in its established service area, and in continuing to meet its clean energy and financial goals.

[For the fiscal year ending June 30, 2022, CPA sold 11,373 GWh to its approximately one million customers, representing approximately \$874 million of revenue and approximately \$68 million of operating income. As of August 31, 2022, CPA has approximately \$103 million in unrestricted cash and short-term investments. – Check if any updates before posting POS]

See APPENDIX A for certain operating and financial information with respect to CPA.

### *The Bonds*

The Bonds will be issued in three separate Series:

- (a) \$ \_\_\_\_\_ Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Term Rate) (the “Series 2022[B]-1 Bonds”),
- (b) \$ \_\_\_\_\_ Clean Energy Project Revenue Bonds, Series 2022[B]-2 (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”), and
- (c) \$ \_\_\_\_\_ Clean Energy Project Revenue Bonds, Series 2022[B]-3 (SOFR Index Rate) (the “Series 2022[B]-3 Bonds”).

The Series 2022[B]-2 Bonds and the Series 2022[B]-3 Bonds are sometimes referred to herein as the “*Index Rate Bonds*.”

From their Initial Issue Date to and including [\_\_\_\_\_] 20[\_\_\_]\* (the “*Initial Interest Rate Period*”):

- (a) the Series 2022[B]-1 Bonds will bear interest at a Term Rate in a Term Rate Period, with interest payable semiannually on each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing [\_\_\_\_\_] 1, 202[\_\_\_]\*,
- (b) the Series 2022[B]-2 Bonds will bear interest at the SIFMA Index Rate in a SIFMA Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of [\_\_\_\_\_] 202[\_\_\_]\*, and

- (c) the Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate in a SOFR Index Rate Period, with interest payable on the first Business Day of each month, commencing on the first Business Day of [ ] 202[ ]\*;

all as shown on the inside cover page and as described herein. See “THE BONDS”.

The Bonds are subject to optional redemption and extraordinary mandatory redemption during the Initial Interest Rate Period, and the Bonds maturing on [ ] 1, 20[ ]\* are required to be tendered for purchase on the day following the end of the Initial Interest Rate Period (the “Mandatory Purchase Date”). The purchase price of Bonds on the Mandatory Purchase Date is equal to the principal amount thereof. Under the Indenture, a “Failed Remarketing” will occur upon the failure (i) of the Trustee to receive the Purchase Price, or to have on deposit in the Bond Purchase Fund amounts sufficient and available to pay the Purchase Price, of any Bond required to be purchased on a Mandatory Purchase Date by 12:00 noon, New York City time, on the fifth Business Day preceding such Mandatory Purchase Date or (ii) to purchase or redeem such Bond in whole by such Mandatory Purchase Date (including from any funds on deposit in the Assignment Payment Fund and required to be used for such redemption). A Failed Remarketing will result in early termination of the Master Power Supply Agreement. See “THE BONDS — Redemption” and “— Tender.”

#### *Security for the Bonds*

The Bonds are issued pursuant to the authority contained in the California Joint Exercise of Powers Act constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time (the “Act”), and are issued and secured under a Trust Indenture, to be dated as of the first day of the month in which the Bonds are issued (the “Indenture”), between CCCFA and [ ], as trustee (the “Trustee”). The Bonds and the Interest Rate Swap are special, limited obligations of CCCFA, are payable solely from and secured solely by the Trust Estate as and to the extent provided in the Indenture and are expected to be paid from the Revenues of the Clean Energy Project. See “SECURITY FOR THE BONDS.”

#### *The Clean Energy Project*

The Clean Energy Project is structured to assist the Project Participant to procure a long-term supply of electricity at attractive prices. In order to do so, the Clean Energy Project includes a feature whereby the Project Participant can seek to assign existing and future power purchase agreements (“PPAs”) to J. Aron & Company LLC (“J. Aron”), and if such assignment is accepted by J. Aron, Electricity thereunder will be delivered to Aron Energy Prepay 14 LLC (the “Electricity Supplier”) to meet the Electricity Supplier’s obligations to deliver prepaid Electricity (“Prepaid Electricity”) to CCCFA under the Master Power Supply Agreement (the “Master Power Supply Agreement”). CCCFA will then deliver such Prepaid Electricity to the Project Participant under the Clean Energy Purchase Contract (the “Clean Energy Purchase Contract”) at the Contract Price. The Project Participant has entered into limited assignment agreements relating to [two (2)] power purchase agreements to J. Aron for delivery beginning [ ] 1, 202[ ]\* (the “Initially Assigned PPAs”).

The description below is intended to provide a summary of transaction documents that facilitate the Clean Energy Project.

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\* Preliminary; subject to change.

*Transaction Structure.* CCCFA is issuing the Bonds to finance the cost of acquisition of an approximately thirty-year supply of Prepaid Electricity under a Master Power Supply Agreement between CCCFA and the Electricity Supplier. The Project Participant and CCCFA will, concurrently with the execution of the Master Power Supply Agreement, enter into the Clean Energy Purchase Contract for the sale of the Prepaid Electricity to be delivered under the Clean Energy Project by the Electricity Supplier at the Contract Price, and any excess assigned Electricity (as further described herein, “Assigned PAYGO Electricity”) to be delivered under the Clean Energy Project by the Electricity Supplier at the APC Contract Price. The acquisition of the approximately thirty-year supply of Electricity is referred to herein as the “Clean Energy Project.” See “THE MASTER POWER SUPPLY AGREEMENT.”

The total quantity of Prepaid Electricity expected to be delivered by the Electricity Supplier during the initial Delivery Period under the Master Power Supply Agreement is an estimated [ ]\* million megawatt hours (“MWh”) of Energy.

*The Assigned PPAs.* The Project Participant expects to assign a portion of its rights and obligations (the “Assigned Rights and Obligations”) to renewable energy, including three-phase, 60-cycle alternating current electric energy (“Energy”), renewable energy credits (“RECs”), capacity, or other related products (collectively, “Electricity”) delivered under the Initially Assigned PPAs to J. Aron pursuant to separate agreements (each, an “Assignment Agreement”) among the Project Participant, J. Aron, and the PPA Seller (as defined herein). J. Aron will use the Electricity delivered under the Initially Assigned PPAs, and any future power purchase contracts assigned to it by the Project Participant (collectively, “Assigned PPAs”), to meet its obligation to deliver Prepaid Electricity under the Electricity Purchase Sale and Service Agreement (the “Electricity Purchase, Sale and Service Agreement”) with the Electricity Supplier. The quantities of Electricity to be delivered in connection with the Assigned Rights and Obligations will be “Assigned Quantities” and will consist of “Assigned Prepay Quantities”, to the extent related to Prepaid Electricity, and “Assigned PAYGO Quantities”, to the extent related to Assigned PAYGO Electricity.

In the event of termination of the Master Power Supply Agreement or a requirement to remarket the Prepaid Electricity, the rights, title and interest under the Assigned PPAs will revert back to the Project Participant, who may continue to receive the Electricity delivered under such agreements at the price payable under the applicable Assigned PPA (the “APC Contract Price”). In the event of a termination of an Assignment Agreement, no termination payment other than payment for delivered Electricity will be required to be made by CCCFA, the Electricity Supplier, or J. Aron.

*Comparison to Tax-Exempt Commodity Prepayment Structures.*

The Clean Energy Project retains many of the features common to prior tax-exempt commodity prepayment transactions. *For ease of investors, a short description of certain notable similarities and differences is provided below. These descriptions should not be used to make an investment decision. Any investment decision must be based upon reading the entire Official Statement, which describes the Clean Energy Project and the security for the Bonds.*

*Notable Similarities.* The Clean Energy Project includes a number of similarities to traditional prepayment transactions. Some, but not all, of these similarities include:

- CCCFA issues the Bonds, the interest on which is exempt from Federal and California income taxes, to prepay for approximately thirty years of commodity deliveries. See “TAX MATTERS” herein.

- The proceeds of the Bonds are used to finance the prepayment, and the Bonds are subject to mandatory tender at the end of the initial Interest Rate Period. See “THE BONDS – *Tender*” herein.
- The Electricity Supplier is lending an amount of funds approximately equal to the prepayment amount to [the Funding Recipient]. See “THE FUNDING AGREEMENT” herein.
- Upon a Termination Payment Event, the Electricity Supplier is required to make the Termination Payment, which has been calculated to be sufficient along with other funds scheduled to be on hand, to be sufficient to pay the Redemption Price. See “THE BONDS – *Redemption*” and “THE MASTER POWER SUPPLY AGREEMENT – *Early Termination*” herein.
- To the extent the Project Participant’s qualified electricity requirements decline such that the Project Participant can no longer use the Prepaid Electricity to make qualified retail sales, it has the right to request CCCFA to request the Electricity Supplier to remarket the Prepaid Electricity. See “THE MASTER POWER SUPPLY AGREEMENT – *Electricity Remarketing*” herein.
- If the Project Participant fails to make a payment, CCCFA is required to stop all future deliveries of Electricity and request the Electricity Supplier remarket all such future deliveries, until such time as the Project Participant has cured its default. See “THE CLEAN ENERGY PURCHASE CONTRACT – *Default*” herein.

*The above description is intended to just be a subset of certain similarities between the Clean Energy Project and prior prepayment transactions. Investors must read the entire Official Statement for a full description of the Clean Energy Project and the Bonds.*

*Notable Differences.* The Clean Energy Project contains certain differences from prior tax-exempt commodity prepayment transactions not involving CCAs, primarily related to the electric delivery function and the assignment of Assigned PPAs, to wit:

- *Assigned PPAs.* As discussed under “– *The Assigned PPAs*” above, the Project Participant will assign [two (2)] Initially Assigned PPAs to J. Aron and has the right to assign additional PPAs in the future (which assignment is subject to J. Aron’s consent). J. Aron will use the Electricity delivered under the Initially Assigned PPAs and any other Assigned PPAs, if any, to satisfy its obligations under the Electricity Purchase, Sale and Service Agreement. See THE CLEAN ENERGY PURCHASE CONTRACT – *Assignment of Power Purchase Agreements.*”
- *Project Participant Payment for Prepaid Electricity.* The Project Participant shall pay for all Assigned Electricity actually delivered. The amount of Assigned Prepay Quantities to be delivered under the Initially Assigned PPAs is anticipated to be less than 11% of the Project Participant’s annual electricity needs as measured by sales for fiscal year ending June 30, 2022. To the extent the Assigned PPAs provide an aggregate amount of Electricity less than the amount necessary to meet the planned volumes of Prepaid Electricity set forth in the Clean Energy Purchase Contract, the Electricity Supplier must sell the Assigned Electricity not delivered in a private business use sale at the APC Contract Price, and shall pay to CCCFA an amount equal to the product of the Assigned Prepay Quantity less the quantity of Assigned Electricity actually delivered multiplied by the APC Contract Price. See “THE MASTER POWER SUPPLY AGREEMENT – *Failure to Deliver or Receive*”

*Electricity*” herein. To the extent the Assigned PPAs provide an aggregate amount of Electricity greater than the amount necessary to meet the delivery schedules of Prepaid Electricity set forth in the Clean Energy Purchase Contract, such Electricity will be delivered to the Project Participant at the APC Contract Price. Such excess Electricity, described herein as Assigned PAYGO Electricity, and associated payments are not part of the Trust Estate. See “THE CLEAN ENERGY PURCHASE CONTRACT – Pricing Provisions.”

- *Delivery of and Payment for Electricity.* Assigned Electricity will be delivered by the Electricity Supplier to CCCFA under the Master Power Supply Agreement. In the event an Assigned PPA terminates, or otherwise there are not Assigned PPAs of sufficient quantities, the Electricity Supplier will deliver or remarket Electricity in an amount designated in the Master Power Supply Agreement, as it may be adjusted or reduced pursuant to the terms thereof to be delivered in such hour (“*Base Quantities*”). Base Quantities are not expected to be delivered during the Initial Interest Rate Period.
- *Remarketing.* In the event the Project Participant is unable to assign PPAs with sufficient quantities to J. Aron under the Clean Energy Project, then amount of Base Quantities delivered will increase. [To the extent Base Quantities are characterized as baseload Electricity but do not qualify as EPS Compliant Energy, as is currently the case, the Electricity Supplier is required to remarket the Base Quantities.] In such a circumstance, the Project Participant is unlikely to realize the full discount intended to be realized from the Clean Energy Project, if any discount at all. In the first twelve (12) months of deliveries, the Clean Energy Project is anticipated to deliver [\_\_\_\_\_] \* MWhs of Assigned Prepay Quantities. From [\_\_\_\_\_] 1, 20[ ] through [\_\_\_\_\_] [ ], 20[ ], the Project Participant purchased [\_\_\_\_\_] MWhs under the Initially Assigned PPAs. It is anticipated that the Project Participant will be able to assign sufficient PPAs to meet the required Prepaid Electricity delivery obligations of the Electricity Supplier during the Delivery Period.
- *Commodity Swaps.* In the event Prepaid Electricity must be remarketed, the Electricity Supplier will either sell the Prepaid Electricity to qualified buyers or will purchase the Prepaid Electricity for its own account. In either event, the payments for the Electricity will be based on market pricing at such time. In order to ensure there are sufficient funds available to meet the payments of principal of and interest on the Bonds, CCCFA has entered into thirty-year commodity swaps with the Commodity Swap Counterparties under which CCCFA will pay market prices and receive fixed prices (the “*CCCFA Commodity Swaps*”). The Electricity Supplier has entered into mirror commodity swaps (the “*Electricity Supplier Commodity Swaps*” and, together with the CCCFA Commodity Swaps, the “*Commodity Swaps*”). Payments are only made under the Commodity Swaps to the extent Base Quantities are being delivered, which currently would result in a remarketing. Otherwise, the Commodity Swaps are dormant (as is anticipated for the Initial Interest Rate Period), and while such Commodity Swaps are dormant, CCCFA cannot have a cash flow default thereunder. See “THE COMMODITY SWAPS” herein.

*The above description is intended to just be a subset of certain of the differences between the Clean Energy Project and prior prepayment transactions. Investors must read the entire Official Statement for a full description of the Clean Energy Project and the Bonds.*

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\* Preliminary, subject to change.

## Summary of Transaction Documents

### *The Master Power Supply Agreement*

*General.* Under the Master Power Supply Agreement, CCCFA has agreed to make a lump sum advance payment to the Electricity Supplier for all of the cost of the delivery of Electricity, consisting of energy delivered to J. Aron pursuant to Assigned Rights and Obligations (“*Assigned Electricity*”) and Base Quantities. The Electricity Supplier will be obligated under the Master Power Supply Agreement to deliver an estimated [ ]\* million MWh of Electricity to CCCFA during the Initial Interest Rate Period. J. Aron will, pursuant to the Electricity Purchase, Sale and Service Agreement, sell Electricity to the Electricity Supplier, which will enable the Electricity Supplier to meet its obligations under the Master Power Supply Agreement to deliver Electricity to CCCFA. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT” herein. Neither CCCFA nor the Electricity Supplier will have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Electricity, as further discussed under “THE MASTER POWER SUPPLY AGREEMENT — *Assignment of Power Purchase Agreements*” herein. The Electricity Supplier is obligated to make payments to CCCFA for Base Quantities not delivered or taken under the Master Power Supply Agreement for any reason, including *Force Majeure* events.

*Assignment of Power Purchase Agreements.* The Project Participant will assign its Assigned Rights and Obligations under the Initially Assigned PPAs to J. Aron (the “*Initial Assigned Rights and Obligations*”) prior to the commencement of deliveries of Electricity pursuant to the Clean Energy Project, as discussed under the subheading “– *The Clean Energy Project – The Assigned PPAs*” above. In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations or a failure to assign any portion of the Initial Assigned Rights and Obligations, the Project Participant shall exercise commercially reasonable efforts to assign replacement Assigned Rights and Obligations (“*Replacement Assigned Rights and Obligations*”) to J. Aron, which assignment is subject to J. Aron’s consent. Upon such a replacement, the Base Quantities will be revised as provided in the Clean Energy Purchase Contract. **Assigned Rights and Obligations are expected to be in place for the entirety of the Initial Interest Rate Period, and Base Quantities are not expected to be delivered or remarketed during the Initial Interest Rate Period.**

*Electricity Remarketing and Ledger Event.* The Electricity Supplier must remarket Electricity designated for remarketing by CCCFA. In the event remarketing of Assigned Electricity is requested, the Electricity Supplier has the right to terminate the applicable Assignment Period and remarket a corresponding amount of Base Quantities on behalf of CCCFA. Under the Electricity Purchase, Sale and Service Agreement, J. Aron provides remarketing services necessary for the Electricity Supplier to meet its remarketing obligations with respect to Prepaid Electricity under the Master Power Supply Agreement. These services include requirements to (a) enter all remarketing sales or purchases of Electricity on a ledger system that tracks compliance with the requirements of the U.S. Treasury Regulations applicable to tax-exempt bonds that finance prepaid electricity supplies, and (b) remediate any non-complying sales (i.e., non-qualifying use sales and private business use sales) through “qualifying use” sales within two years. In the event that there are any non-complying sales that have not been remediated by J. Aron within one year, the Electricity Supplier (acting at the direction of the director of the Electricity Supplier appointed by CCCFA) may appoint a third-party remarketing agent to remediate the outstanding ledger entries, subject to certain requirements.

In the event that any non-complying Electricity remarketing sales are not remediated within two years and exceed certain cumulative limits, a “*Ledger Event*” will occur, subject to certain provisions of the Master Power Supply Agreement. If a Ledger Event occurs, J. Aron will be obligated to pay the Electricity

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\* Preliminary, subject to change.

Supplier, and the Electricity Supplier will be obligated to pay CCCFA, scheduled amounts (the “*Additional Payments*”) calculated to provide a sum sufficient (together with the interest component of the Scheduled Debt Service Deposits and any Interest Rate Swap Receipts) to enable CCCFA to pay interest on the Series 2022[B]-1 Bonds at a rate of 8.00% per annum, and to pay interest on the Index Rate Bonds at the applicable Index Rate plus \_\_\_% (each an “*Increased Interest Rate*”). The Indenture provides that, subject to CCCFA’s receipt of such Additional Payments from the Electricity Supplier, interest on the Bonds will be paid at the Increased Interest Rate after the occurrence of a Ledger Event. See “THE BONDS — Increased Interest Rate Upon Ledger Event,” See “THE MASTER POWER SUPPLY AGREEMENT — Electricity Remarketing” and “— Ledger Event,” and “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT — J. Aron as Agent” and “— Additional Amounts Payable Following a Ledger Event.”

*Early Termination.* An Electricity Delivery Termination Date will occur automatically under the Master Power Supply Agreement upon the occurrence of a Termination Payment Event (which includes a Failed Remarketing with respect to the Bonds) or an Automatic Electricity Delivery Termination Event. When a Termination Payment Event occurs, the Electricity Delivery Termination Date will be the last Business Day of the first month that commences after such Termination Payment Event, and when an Automatic Electricity Delivery Termination Event occurs, the Electricity Delivery Termination Date will be the end of the Month in which an Automatic Electricity Delivery Termination Event occurs. Upon the occurrence of an Optional Electricity Delivery Termination Event, an Electricity Delivery Termination Date may be designated by the Electricity Supplier. If an Electricity Delivery Termination Date occurs, the Delivery Period under the Master Power Supply Agreement will end as of the last day of the month and the Electricity Supplier will be required:

(a) in the case of a Termination Payment Event, to pay a scheduled termination payment (the “*Termination Payment*”) to CCCFA (i) on the last Business Day of the Month following the Month in which the Termination Payment Event occurs, or (ii) in the case of a Termination Payment Event due to a Failed Remarketing, on the last Business Day of the then-current Interest Rate Period (in either case, the “*Early Termination Payment Date*”); or

(b) in the case of an Electricity Delivery Termination Date that occurs for any other reason, to pay scheduled monthly amounts to CCCFA until the earlier of the last day of the Month in which (i) the Early Termination Payment Date occurs or (ii) the last due date for which payments are scheduled. The scheduled monthly amounts payable by the Electricity Supplier would be paid to the Trustee for deposit into the Revenue Fund and would be sufficient to enable the Trustee to make the required transfers in respect of Scheduled Debt Service Deposits factoring in earnings from the Debt Service Account.

For descriptions of Termination Payment Events, Automatic Electricity Delivery Termination Events, Optional Electricity Delivery Termination Events, and the payments required to be made by the Electricity Supplier, see “THE MASTER POWER SUPPLY AGREEMENT—Early Termination” and “— Remedies and Termination Payment.”

If an Automatic Electricity Delivery Termination Event or an Optional Electricity Delivery Termination Event (collectively, a “*Electricity Delivery Termination Event*”) occurs, and [the Funding Recipient] does not exercise its option to prepay the Final Payment Amount under the Funding Agreement (as such terms are defined below) or the Electricity Supplier does not exercise its option to terminate the Funding Agreement at any time after the designation of an Electricity Delivery Termination Date due to a Ledger Event, the Early Termination Payment Date will not occur until the earlier of (a) the occurrence of a Termination Payment Event or (b) the end of the Initial Interest Rate Period. In this event, the scheduled monthly amounts required to be paid by the Electricity Supplier will be applied to make the debt service payments on the Bonds. *The use of these scheduled payments (in lieu of payments made by the Project*

*Participant under the Clean Energy Purchase Contract) to make debt service payments could, under certain circumstances, adversely affect the continued tax-exempt status of the Bonds. See “INVESTMENT CONSIDERATIONS — Loss of Tax Exemption on Bonds.”*

If an Early Termination Payment Date occurs, the Bonds will be subject to extraordinary mandatory redemption in whole on the first day of the next Month, *provided, however*, that in the case of a Failed Remarketing, such extraordinary mandatory redemption will occur on the Mandatory Tender Date. The amount of the Termination Payment declines over time as the Electricity Supplier performs its Electricity delivery obligations under the Master Power Supply Agreement. The amount of the Termination Payment, together with the amounts scheduled to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that the Electricity Supplier, [*Funding Recipient*] (“[ ]”), the Project Participant (or if the Project Participant were to fail to pay, the performance of Project Participant Credit Enhancement (as defined herein under “THE CLEAN ENERGY PURCHASE CONTRACT — Project Participant Credit Enhancement”), and the Investment Agreement Provider(s) (defined below), pay and perform their respective contract obligations when due. A performance shortfall from any one of these entities could result in a payment shortfall to Bondholders.

See “THE MASTER POWER SUPPLY AGREEMENT,” and “THE BONDS — Redemption — *Extraordinary Mandatory Redemption.*” A schedule of the monthly Termination Payment during the Initial Interest Rate Period under the Master Power Supply Agreement is attached as APPENDIX I. Upon an Early Termination of the Master Power Supply Agreement, the Assignment Agreements shall terminate.

#### *The Receivables Purchase Provisions*

*Put Receivables.* The Master Power Supply Agreement contains certain provisions (the “*Receivables Purchase Provisions*”) designed to mitigate risks to Bondholders resulting from non-payments by the Project Participant under the Clean Energy Purchase Contract. If the amounts on deposit in the Commodity Reserve Account and the Debt Service Reserve Account are less than the Minimum Amount and the Debt Service Reserve Requirement at the time of an Early Termination Payment Date under the Master Power Supply Agreement or at the final maturity of the Bonds and insufficient funds are available to pay the amounts coming due on the Bonds, the Trustee is required to put certain Receivables relating to non-payments by the Project Participant to the Electricity Supplier (as “*Receivables Purchaser*”) for purchase (“*Put Receivables*”).

*Swap Deficiency Call Receivables.* If the Project Participant defaults on its obligation to make any payment under the Clean Energy Purchase Contract and such payment default results in a Swap Payment Deficiency, the Trustee shall offer to sell to the Electricity Supplier sufficient Swap Deficiency Call Receivables to fund any Swap Payment Deficiency (defined in APPENDIX C) resulting from such default. No later than the Business Day following the Electricity Supplier’s receipt of a Swap Deficiency Call Receivables Offer, the Electricity Supplier may elect, in its discretion, to purchase the Call Receivables referenced in the Swap Deficiency Call Receivables Offer. If the Electricity Supplier does not make such election, the Electricity Supplier will be deemed to have elected not to purchase the referenced Swap Deficiency Call Receivables, which constitutes an Automatic Electricity Delivery Termination Event under the Master Power Supply Agreement. See “THE MASTER POWER SUPPLY AGREEMENT — Receivables Purchase Provisions” herein.

*Elective Call Receivables.* If the Project Participant defaults on its obligation to make any payment under the Clean Energy Purchase Contract and such payment default does not result in a Swap Payment Deficiency, the Trustee shall offer to sell to the Electricity Supplier Elective Call Receivables (defined in APPENDIX C) resulting from such default. The Electricity Supplier may elect, in its discretion, to purchase

the Elective Call Receivables at any time. If the Electricity Supplier does not make such election, it does not constitute an Automatic Electricity Delivery Termination Event under the Master Power Supply Agreement. See “THE MASTER POWER SUPPLY AGREEMENT — Receivables Purchase Provisions” herein.

Under the Electricity Purchase, Sale and Service Agreement, J. Aron has agreed to purchase all Receivables purchased by the Electricity Supplier under the Receivables Purchase Provisions, provided that J. Aron’s obligation to purchase Swap Deficiency Call Receivables and Elective Call Receivables is subject to it having provided its prior written consent to the purchase of such Call Receivables by the Electricity Supplier. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT.”

### *The Funding Agreement*

Upon receipt of the prepayment amount from CCCFA under the Master Power Supply Agreement, the Electricity Supplier will loan an equal amount to [the Funding Recipient] (less a structuring fee paid to J. Aron), as borrower (in such capacity, the “*Funding Recipient*”) under a [Term Loan Agreement] dated as of the Initial Issue Date (the “*Funding Agreement*”). [The Funding Recipient] will [repay the loan] in scheduled monthly payments reflecting a fixed rate of interest commencing in \_\_\_\_\_ 20\_\_ ending in \_\_\_\_\_ 20\_\_ (the “*Scheduled Amounts*”). The final Scheduled Amount is due on the second to last Business Day of the Initial Interest Rate Period of the Bonds.

Upon (a) a default by [the Funding Recipient] in the payment of the Scheduled Amounts that is not cured within 30 days or (b) certain insolvency events with respect to [the Funding Recipient], the Funding Recipient is required to pay a scheduled final payment amount (the “*Final Payment Amount*”). The amount of the Final Payment Amount declines over time as the Funding Recipient pays the required Scheduled Amounts under the Funding Agreement. [In addition, commencing six months after the date of the Funding Agreement, [the Funding Recipient] at its option may prepay the loan in full by payment of the Final Payment Amount upon or following an Electricity Delivery Termination Date under the Master Power Supply Agreement.]

For a further description of the provisions of the Funding Agreement, see “THE FUNDING AGREEMENT” below.

*The ability of the Electricity Supplier to meet its obligations under the Master Power Supply Agreement, the Electricity Purchase, Sale and Service Agreement and the Electricity Supplier Commodity Swaps will directly and materially depend upon full and timely performance by [the Funding Recipient] under the Funding Agreement. Any failure by [the Funding Recipient] to timely pay the Scheduled Amounts or the Final Payment Amount when due under the Funding Agreement may result in an inability of the Electricity Supplier to meet its contract obligations to CCCFA and a shortfall in the amounts necessary for CCCFA to pay the principal, interest, Redemption Price and purchase price due on the Bonds. The Funding Agreement is an unsecured obligation of [the Funding Recipient]. See “INVESTMENT CONSIDERATIONS— Performance by Others.”*

### *The Electricity Purchase, Sale and Service Agreement*

Under the Electricity Purchase, Sale and Service Agreement, J. Aron has agreed to sell Electricity during the Delivery Period to the Electricity Supplier to enable the Electricity Supplier to meet its Electricity delivery obligations under the Master Power Supply Agreement. J. Aron is obligated to make payments to the Electricity Supplier for Base Quantities not delivered or taken under the Electricity Purchase, Sale and Service Agreement for any reason, including *force majeure* events, however neither J. Aron nor the Electricity Supplier has any liability or obligation to the other for any failure to Schedule, receive, or deliver Assigned Electricity, except as described under “THE MASTER POWER SALES AGREEMENT — *Assignment*

*of Power Purchase Agreements” and “THE CLEAN ENERGY PURCHASE CONTRACT — Pricing Provisions – CPA Monthly Payments” herein.*

J. Aron will remarket Electricity and make payments to the Electricity Supplier that enable it to meet its obligations under the Master Power Supply Agreement. J. Aron is appointed as the Electricity Supplier’s agent for taking all actions that the Electricity Supplier is required or permitted to take under the Master Power Supply Agreement, the Electricity Supplier Commodity Swaps, the Re-Pricing Agreement and (with respect to ordinary course transactions) the Electricity Purchase, Sale and Services Agreement. J. Aron’s Electricity Delivery, payment, remarketing and receivables purchase obligations under the Electricity Purchase, Sale and Service Agreement mirror the Electricity Supplier’s obligations under the Master Power Supply Agreement. The Electricity Supplier may net any amounts due and owing to it by J. Aron against its monthly payments to J. Aron, but J. Aron is not entitled to net any amounts due and owing to it against its monthly payments to the Electricity Supplier.

The payment obligations of J. Aron to the Electricity Supplier under the Electricity Purchase, Sale and Service Agreement are unconditionally guaranteed by GSG.

See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT.”

#### *The Clean Energy Purchase Contract*

The Clean Energy Purchase Contract provides for the sale to the Project Participant of the Electricity to be delivered to CCCFA over the term of the Master Power Supply Agreement. Such Electricity will be comprised of Assigned Quantities and, if the Assigned Prepay Quantities multiplied by the APC Contract Price (“*Assigned Prepay Value*”) for all assignments are less than the aggregate prepaid value for such month, then Base Quantities for such month. Under the Clean Energy Purchase Contract, CCCFA has agreed to deliver, and the Project Participant has agreed to purchase such Assigned Quantities and to provide for the remarketing of any Base Quantities, to the extent Base Quantities [are characterized as baseload Electricity but] do not qualify as EPS Compliant Energy, during the Delivery Period.

**The payments required to be made under the Clean Energy Purchase Contract, together with any net amounts received by CCCFA under the CCCFA Commodity Swap and Interest Rate Swap described below, constitute the primary and expected sources of the revenues pledged to the payment of the Bonds. The obligations of the Project Participant under the Clean Energy Purchase Contract are payable solely from revenues of the Project Participant derived from its power customer sales operations.**

If the actual quantity of Assigned Electricity delivered is less than the pre-determined Assigned Prepay Quantities, the Electricity Supplier must sell the Assigned Electricity not delivered in a private business use sale at the APC Contract Price, and shall pay to CCCFA an amount equal to the product of the Assigned Prepay Quantity less the quantity of Assigned Electricity actually delivered multiplied by the APC Contract Price.

The Electricity Supplier has agreed to remarket, on a daily or monthly basis, Electricity subject to specific requirements. In the event that the Electricity Supplier is unable to remarket any such Electricity, the Electricity Supplier has agreed to purchase such Electricity.

#### *Debt Service and Commodity Reserves*

The Indenture establishes funding requirements for various funds and accounts, including the Debt Service Account, the Debt Service Reserve Account and the Commodity Reserve Account. Scheduled

Debt Service Deposits are required to be made monthly into the Debt Service Account in amounts equal to the accrued debt service on the Bonds. The Debt Service Account, the Debt Service Reserve Account and the Commodity Reserve Account will be invested pursuant to investment agreements (the “*Investment Agreements*”). \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, the providers of the Debt Service Account Investment Agreement, the Commodity Reserve Account Investment Agreement, and the Debt Service Reserve Account Investment Agreement, respectively (the “*Investment Agreement Providers*”), have agreed to the timely payment of scheduled amounts due under the Investment Agreements which, together with other Revenues, provide sufficient monies to CCCFA to pay debt service. See “SECURITY FOR THE BONDS — Investment of Funds.”

The Debt Service Reserve Account and the Commodity Reserve Account provide reserves for debt service deposits and payments to the Commodity Swap Counterparties in the event of payment defaults by the Project Participant under the Clean Energy Purchase Contract. The Debt Service Reserve Requirement is \$[\_\_\_\_\_]\*, which is approximately equal to the two largest months of the maximum monthly Scheduled Debt Service Deposit during the Initial Interest Rate Period. The Minimum Amount required to be on deposit in the Commodity Reserve Account is approximately \$[\_\_\_\_\_]. The Debt Service Reserve Requirement and the Minimum Amount are sufficient to cover a payment default by the Project Participant for over three months of maximum CPA payments for Assigned Prepay Quantities during the Initial Interest Rate Period.

#### *Re-Pricing Agreement*

On the Initial Issue Date of the Bonds, CCCFA and the Electricity Supplier will enter into a Re-Pricing Agreement (the “*Re-Pricing Agreement*”), which provides for (a) the determination of Electricity Delivery periods subsequent to the initial Delivery Period to correspond to the related Interest Rate Periods on the Bonds (“*Reset Periods*”) and (b) the determination of the amount of the discount, as a percentage of the fixed prices of the Electricity that is available under the Assigned PPAs for such Reset Period (the “*Minimum Discount Percentage*”) for sales to the Project Participant under the Clean Energy Purchase Contract during each Reset Period.

The initial Delivery Period under the Master Power Supply Agreement begins on the first day of [\_\_\_\_\_] 202[\_\_\_]\* and ends on the last day of [\_\_\_\_\_] 20[\_\_\_]\*, and the first Reset Period is expected to begin on the first day of \_\_\_\_\_ 20\_\_\_. In the event that the Available Discount Percentage for any Reset Period is less than the Minimum Discount Percentage, the Project Participant may elect not to take Electricity during the Reset Period and to have the Electricity remarketed for the duration of the Reset Period (a “*Remarketing Election*”) by giving notice of such election to CCCFA.

#### *Commodity Swaps*

Payments of fixed and floating amounts under the Commodity Swaps described herein are not made until and unless one or more Assignment Agreements terminates or ends, in which case Base Quantities are required to be delivered or remarketed by the Electricity Supplier. Base Quantities are not expected to be delivered or remarketed during the Initial Interest Rate Period, and as such, payments under the Commodity Swaps are not expected to be made during the Initial Interest Rate Period.

If the Project Participant requires remarketing of Electricity, the Project Participant can request CCCFA remarket all or a portion of the Electricity, and in turn, CCCFA can request the Electricity Supplier remarket all or a portion of the Electricity. In such a circumstance, the Electricity Supplier would remarket

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\* Preliminary, subject to change.

Base Quantities and the Commodity Swaps would become effective and hedge the market pricing of such Electricity.

The swap counterparties are [ ] (“[ ]”) and [ ] (“[ ]”). See “THE COMMODITY SWAPS” and “THE COMMODITY SWAP COUNTERPARTIES.”

#### *Interest Rate Swap*

With respect to any Index Rate Bonds that are issued, CCCFA will enter into an interest rate swap agreement (the “*Interest Rate Swap*”) with J. Aron, as Interest Rate Swap Counterparty, in order to hedge its exposure to interest rate fluctuations on the Index Rate Bonds, and more closely match its payment obligations on the Index Rate Bonds with its expected Revenues from payments under the Clean Energy Purchase Contract and the CCCFA Commodity Swaps. Under the Interest Rate Swap, CCCFA will pay amounts corresponding to the principal amounts of the Index Rate Bonds at a fixed interest rate and will receive amounts corresponding to the principal amounts of the Index Rate Bonds at floating rates equal to the interest rates on the Index Rate Bonds. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period. The payment obligations of J. Aron to CCCFA under the Interest Rate Swap are unconditionally guaranteed by GSG. See “THE INTEREST RATE SWAP.”

#### *The Electricity Supplier, J. Aron, and GSG*

The Electricity Supplier is a Delaware limited liability company organized for the sole purpose of entering into the transactions on its part with respect to the Clean Energy Project described herein. J. Aron is the sole member of the Electricity Supplier, and will fund the Electricity Supplier with a cash equity contribution, an initial subordinated loan, and, if required, a contingent subordinate loan that together equal to at least three percent of the outstanding (unamortized) amount of the prepayment under the Master Power Supply Agreement (approximately \$ \_\_\_\_\_ as of the Initial Issue Date).

J. Aron is wholly owned by GSG, and is engaged principally as a swap dealer and market-maker for Electricity, currencies and derivative contracts thereon. J. Aron’s payment obligations to the Electricity Supplier under the Electricity Purchase, Sale and Service Agreement have been unconditionally guaranteed by GSG. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT — Security.” In addition, J. Aron’s payment obligations to CCCFA under the Interest Rate Swap have been unconditionally guaranteed by GSG.

J. Aron, a participant in the commodities business for over 100 years, was acquired in 1981 by GSG, and is the entity through which GSG participates in Electricity markets. J. Aron is a registered swap dealer and market-maker for a wide array of commodity derivative contracts including Electricity.

J. Aron has market based rate authority from the FERC for energy, capacity and ancillary services sales at market-based rates. Since 2006, J. Aron has executed twenty-five commodity prepayment transactions with municipal utilities and joint action agencies. Since 2018, J. Aron has enabled more than 1,500 MWs of renewable offtake transactions.

GSG, together with its consolidated subsidiaries, is a leading global investment banking, securities and investment management firm that provides a wide range of financial services to a substantial and diversified client base that includes corporations, financial institutions, governments and individuals.

See “GSG, J. ARON AND THE ELECTRICITY SUPPLIER.”

### *Certain Relationships*

The Electricity Supplier, which is the prepaid seller under the Master Power Supply Agreement, the Receivables Purchaser, the counterparty to the Electricity Supplier Commodity Swaps, the buyer under the Electricity Purchase, Sale and Service Agreement and the lender under the Funding Agreement, is wholly owned by J. Aron. J. Aron has right to direct certain ordinary course actions taken by the Electricity Supplier.

J. Aron is wholly owned by GSG. The payment obligations of J. Aron under the Electricity Purchase, Sale and Service Agreement and the payment obligations of J. Aron to CCCFA under the Interest Rate Swap are unconditionally guaranteed by GSG. [GSG is also the Funding Recipient under the Funding Agreement.] Goldman Sachs & Co. LLC, as Underwriter of the Bonds, is wholly owned by GSG.

The relationships described above could create an actual or apparent conflict of interest.

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This Official Statement includes information regarding and descriptions of CCCFA, the Clean Energy Project, the Electricity Supplier, J. Aron, [the Funding Recipient], GSG, the Commodity Swap Counterparties, the Project Participant and the Bonds, and summaries of certain provisions of the Indenture, the Clean Energy Purchase Contract, the Master Power Supply Agreement, the Electricity Purchase, Sale and Service Agreement, the Funding Agreement, the Commodity Swaps, the Interest Rate Swap, the Receivables Purchase Provisions, the Re-Pricing Agreement, the Investment Agreements and the Custodial Agreements referred to herein. Such descriptions and summaries do not purport to be complete or definitive, and such summaries are qualified by reference to such documents. Certain of these documents are available to prospective investors during the initial offering period of the Bonds and thereafter to Bondholders, in each case upon request to CCCFA. Descriptions of the Indenture, the Bonds, the Clean Energy Purchase Contract, the Commodity Swaps, the Interest Rate Swap, the Investment Agreements, the Custodial Agreements, the Receivables Purchase Provisions, the Re-Pricing Agreement, the Electricity Purchase, Sale and Service Agreement, the Funding Agreement and the Master Power Supply Agreement are qualified by reference to bankruptcy laws affecting the remedies for the enforcement of the rights and security provided therein and the effect of the exercise of police and regulatory powers by federal and state authorities.

***This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after interest on the Bonds is converted to another Interest Rate Period.***

### **INVESTMENT CONSIDERATIONS**

The purchase of the Bonds involves certain investment considerations discussed throughout this Official Statement. Prospective purchasers of the Bonds should make a decision to purchase the Bonds only after reviewing the entire Official Statement and making an independent evaluation of the information contained herein. Certain of those investment considerations are summarized below. This summary does not purport to be complete, and the order in which the following investment considerations are presented is not intended to reflect their relative significance.

#### *Special and Limited Obligations*

The Bonds and the Interest Rate Swap are special, limited obligations of CCCFA and are payable solely from and secured solely by the Trust Estate pledged pursuant to the Indenture. The Trust Estate

includes only the proceeds, revenues, funds and rights related to the Clean Energy Project, as described under “SECURITY FOR THE BONDS — The Indenture” below, and does not include any other revenues or assets of CCCFA. The Bonds are not general obligations of CCCFA, and CCCFA has no taxing power.

Only CCCFA is obligated to pay the Bonds. The Project Participant is not obligated to make payments in respect of the debt service on the Bonds. None of the Electricity Supplier, J. Aron, [the Funding Recipient] or GSG, is obligated to make debt service payments on the Bonds, and none of them has guaranteed payment of the Bonds.

### *Structure of the Clean Energy Project*

The Master Power Supply Agreement, the Clean Energy Purchase Contract, the Investment Agreements, the Commodity Swaps, the Interest Rate Swap, the Indenture, the Receivables Purchase Provisions, the Bonds and related agreements have been structured so that, assuming timely performance and payment by the Electricity Supplier, J. Aron, [the Funding Recipient], GSG, the Investment Agreement Providers and the Project Participant (or if the Project Participant were to fail to pay, the performance of Project Participant Credit Enhancement (as defined herein)), of their respective contractual obligations, the Revenues available to CCCFA from the Clean Energy Project are sufficient at all times to provide for the timely payment of Operating Expenses and the scheduled Debt Service requirements on the Bonds and the payments due under the Interest Rate Swap. During the Delivery Period that corresponds to the Initial Interest Rate Period for the Bonds, these arrangements include:

- The Electricity Supplier is required to deliver Electricity under the Master Power Supply Agreement to CCCFA such that CCCFA can meet its obligations to the Project Participant under the Clean Energy Purchase Contract. In the event the Electricity Supplier fails to deliver sufficient Electricity to meet the Assigned Prepay Value for any reason, including *force majeure* events, it is required to pay certain specified amounts to CCCFA. The Project Participant must make a payment to CCCFA for the Assigned Prepay Quantities actually delivered.
- If the assignment of any Assigned PPA is terminated, and Base Quantities are to be delivered or remarketed, then J. Aron is required to sell and deliver (or remarket on the Electricity Supplier’s behalf) such Base Quantities under the Electricity Purchase, Sale and Service Agreement to the Electricity Supplier so that the Electricity Supplier can meet its obligations to CCCFA under the Master Power Supply Agreement. In the event J. Aron fails to deliver Base Quantities for any reason, including *force majeure* events, it is required to pay certain specified amounts to the Electricity Supplier. The Electricity Supplier may net any amounts due and owing to it by J. Aron against its monthly payments to J. Aron, but J. Aron is not entitled to net any amounts due and owing to it against its monthly payments to the Electricity Supplier.
- [The Funding Recipient] is required to make scheduled monthly payments under the Funding Agreement which will provide the Electricity Supplier with amounts sufficient to make the payments it is required to make to J. Aron under the Electricity Purchase, Sale and Service Agreement and, in the event Base Quantities are delivered and payments are made under the Commodity Swaps, to the Commodity Swap Counterparties under the Electricity Supplier Commodity Swaps.
- The Project Participant has agreed to pay for Electricity tendered for delivery under the Clean Energy Purchase Contract at the Contract Price. The Project Participant is obligated to pay only for the Assigned Prepay Quantities, actually delivered, as discussed under

“THE MASTER POWER SALES AGREEMENT — Assignment of Power Purchase Agreements.”

- In the event that the Project Participant fails to pay when due any amounts owed under the Clean Energy Purchase Contract, CCCFA has covenanted in the Indenture to exercise its right under the Clean Energy Purchase Contract to suspend further deliveries of Electricity to the Project Participant and to give notice to the Electricity Supplier to follow the provisions of the Master Power Supply Agreement with respect to Electricity for which delivery has been suspended.
- In the event that the Project Participant fails to pay when due any amounts owed under the Clean Energy Purchase Contract, the Trustee’s ability to withdraw amounts from the Debt Service Reserve Account will be dependent on the Debt Service Reserve Account Investment Agreement Provider’s timely paying amounts due.
- In the event that the Project Participant fails to pay when due any amounts owed under the Clean Energy Purchase Contract, the Trustee shall withdraw amounts from the Commodity Reserve Account to make any payments then due to the Commodity Swap Counterparties and withdraw amounts from the Debt Service Reserve Account to make deposits to the Debt Service Account. On the maturity of the Bonds or earlier termination of the Clean Power Project, in the event the Commodity Reserve Account is not funded at a level equal to the Minimum Amount and/or the Debt Service Reserve Account is not funded at a level equal to the Debt Service Reserve Requirement due to the failure of the Project Participant to pay amounts owed, the Trustee is obligated to sell and the Electricity Supplier, as Receivables Purchaser, is obligated to purchase Put Receivables under the Receivables Purchase Provisions. Under the Electricity Sale and Service Agreement, J. Aron has agreed to purchase all Put Receivables purchased by the Electricity Supplier.
- In the event of a suspension of Electricity deliveries, J. Aron will remarket Electricity pursuant to the Electricity Purchase, Sale and Service Agreement in compliance with the requirements of the Master Power Supply Agreement. The Master Power Supply Agreement requires specified payments for all Electricity remarketed or purchased, less certain applicable fees. In the event that J. Aron fails to remediate any non-qualifying or private business use remarketing sales of Electricity within one year, the Electricity Supplier (acting at the direction of the director of the Electricity Supplier appointed by CCCFA) may, subject to certain requirements, appoint a third-party remarketing agent to remediate the non-qualifying or private business use sales.
- In the event that any non-qualifying use remarketing sales of Electricity are not remediated within two years and exceed certain cumulative limits, a Ledger Event will occur, subject to certain provisions of the Master Power Supply Agreement. If a Ledger Event occurs, J. Aron will be obligated to pay the Electricity Supplier, and the Electricity Supplier will be obligated to pay CCCFA, scheduled Additional Payments calculated to provide a sum sufficient (together with the interest component of the Scheduled Debt Service Deposits and any Interest Rate Swap Receipts) to enable CCCFA to pay interest on the Series 2022[B]-1 Bonds at a rate of 8.00% per annum, and to pay interest on the Index Rate Bonds at the applicable Index Rate plus \_\_\_%. The Indenture provides that, subject to CCCFA’s receipt of such Additional Payments from the Electricity Supplier, interest on the Bonds will be paid at the Increased Interest Rate after the occurrence of a Ledger Event.

- In the event of a remarketing wherein the Assignment Agreements are terminated, payments will be required to be made pursuant to the Commodity Swaps. If a Commodity Swap Counterparty does not make a required payment under a CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian under the terms of the applicable Electricity Supplier Custodial Agreement will pay the amount that the Electricity Supplier paid under the corresponding Electricity Supplier Commodity Swap (or in the event of termination of such Electricity Supplier Commodity Swap, the amount that the Electricity Supplier paid into the applicable custodial account as if such Electricity Supplier Commodity Swap were still in effect), which such amount is held in custody, to CCCFA, and such payment will be treated as a Commodity Swap Receipt.
- If an Electricity Delivery Termination Date occurs under the Master Power Supply Agreement as the result of an Electricity Delivery Termination Event, the Electricity Supplier is required to pay scheduled monthly amounts to CCCFA in lieu of Electricity deliveries, which amounts are sufficient to enable CCCFA to make the Scheduled Debt Service Deposits required by the Indenture.
- If a Termination Payment Event occurs under the Master Power Supply Agreement, the Electricity Supplier is required to pay the scheduled Termination Payment to CCCFA.
- Under the Interest Rate Swap, J. Aron has agreed to make timely payments to CCCFA in respect of the floating interest rates on the Index Rate Bonds.
- \_\_\_\_\_, as the provider of the Debt Service Account Investment Agreement, \_\_\_\_\_, as the provider of the Commodity Reserve Account Investment Agreement and \_\_\_\_\_, as the provider of the Debt Service Reserve Account Investment Agreement (each provider, an “*Investment Agreement Provider*”), has agreed to the timely payment of scheduled amounts due under each Investment Agreement which, together with other Revenues, provide sufficient monies to CCCFA to pay debt service.

#### *Performance by Others*

The ability of CCCFA to pay timely the scheduled debt service on the Bonds depends on the timely performance and payment by (a) the Electricity Supplier under the Master Power Supply Agreement, the Receivables Purchase Provisions, and in the event of a remarketing, the Electricity Supplier Commodity Swaps, (b) the Project Participant under the Clean Energy Purchase Contract (or if the Project Participant were to fail to pay, the performance of Project Participant Credit Enhancement), (c) the Investment Agreement Providers under the Investment Agreements, and (d) J. Aron as counterparty under the Interest Rate Swap. The failure by any one or more of such parties to meet such obligations could materially and adversely affect the ability of CCCFA to pay timely the scheduled debt service on the Bonds, and to meet its other obligations under the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the CCCFA Commodity Swaps, and the Interest Rate Swap.

The ability of the Electricity Supplier to meet its performance and payment obligations under the Master Power Supply Agreement, the Electricity Purchase, Sale and Service Agreement and the Electricity Supplier Commodity Swaps will depend directly and materially on timely payment by the Funding Recipient of the loan repayments due under the Funding Agreement and on timely payment and performance by J. Aron of its obligations under the Electricity Purchase, Sale and Service Agreement. The failure by the Funding Recipient or J. Aron to meet such obligations would materially and adversely affect

the ability of the Electricity Supplier to meet its contract obligations to CCCFA, and in turn, the ability of CCCFA to meet its contract obligations to pay timely the scheduled debt service on the Bonds.

The events and conditions that could result in either or both of (a) a default in the payment of Debt Service on the Bonds or (b) an Early Termination Payment Date under the Master Power Supply Agreement, which will cause the extraordinary mandatory redemption of the Bonds, include items that may be within or outside the control of CCCFA or the Electricity Supplier (or both), such as:

- failure by J. Aron in the timely performance of its obligations under the Electricity Purchase, Sale and Service Agreement to deliver Electricity and to make specified payments for Base Quantities, if any, not delivered or taken to enable the Electricity Supplier to meet its obligations to CCCFA under the Master Power Supply Agreement;
- failure of [the Funding Recipient], to make timely payment of the [loan repayments] required by the Funding Agreement, and timely performance by GSG of its guaranty obligations in the event of a nonpayment by J. Aron under the Electricity Purchase, Sale and Service Agreement;
- failure by the Electricity Supplier to purchase receivables from CCCFA prior to or at the time of an extraordinary redemption or the final maturity date of the Bonds that resulted from any non-payment by the Project Participant under the Clean Energy Purchase Contract to the extent the Commodity Reserve Account balance is less than the Minimum Amount or the Debt Service Reserve Account balance is less than the Debt Service Reserve Requirement;
- failure by J. Aron in the timely performance of its payment obligations under the Interest Rate Swap and, in the event of nonpayment by J. Aron, failure by GSG in the timely performance of its guaranty obligations;
- failure by an Investment Agreement Provider to make timely payment of the required amounts due or payable under the respective Investment Agreement, including upon nonpayments by the Project Participant under the Clean Energy Purchase Contract; and
- if one or more Assignment Agreements is terminated, such that payments are required to be made pursuant to the Commodity Swaps, failure by a Commodity Swap Counterparty to make timely payment of the amounts due under a CCCFA Commodity Swap or an Electricity Supplier Commodity Swap coupled with a failure in the timely performance and enforcement of (a) an Electricity Supplier Custodial Agreement and (b) an Electricity Supplier Commodity Swap.

The Master Power Supply Agreement will terminate automatically upon the occurrence of a Termination Payment Event. Upon the occurrence of a Termination Payment Event (a) the Electricity Supplier will be obligated to pay the scheduled Termination Payment on the Early Termination Payment Date and (b) the Bonds will be subject to extraordinary mandatory redemption.

The scheduled amount of the Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide CCCFA with an amount at least sufficient to redeem all of the Bonds, assuming that the Electricity Supplier, [the Funding Recipient], the Project Participant (or if the Project Participant were to fail to pay, the performance of Project Participant Credit Enhancement) and the Investment Agreement Providers pay and perform their respective contract obligations when due. If the Termination Payment becomes payable, the Bonds are to

be redeemed at their Amortized Value regardless of reinvestment rates at the time. See “THE MASTER POWER SUPPLY AGREEMENT — Early Termination” and “THE BONDS — Redemption — *Extraordinary Mandatory Redemption.*”

### *Electricity Remarketing*

If the Project Participant does not require or is unable to receive all or any portion of the Assigned Quantities or Base Quantities that it is obligated to purchase during the Delivery Period under the Clean Energy Purchase Contract as a result of (a) decreased demand by its retail customers, (b) the quantity of Assigned Electricity delivered in any Month during an Assignment Period is less than the Assigned Prepay Quantity for any reason, (c) a change in law, or (d) inability to take delivery of Base Quantities, [to the extent Base Quantities are characterized as baseload Electricity but] are not EPS Compliant Energy under California law (as is the case currently), it may request CCCFA to arrange for the Electricity Supplier to remarket Assigned Quantities or Base Quantities. Under the Master Power Supply Agreement, the Electricity Supplier has agreed, upon written notice from CCCFA or the Trustee, to use commercially reasonable efforts to remarket or cause to be remarketed, such amounts of Electricity as are identified by CCCFA. To the extent the Electricity Supplier is unable to accomplish such remarketing, the Electricity Supplier must purchase any such Electricity for its own account.

California’s Emissions Performance Standard (“EPS”) regulations, codified as Senate Bill 1368 (2006) (“SB 1368”) prevents all California utilities, both privately and publicly owned, from signing long-term contracts to purchase [baseload] Electricity other than EPS Compliant Energy. Under current law, “EPS Compliant Energy” is Energy from a specified [baseload] source with greenhouse gas emissions less than or equal to the emissions of greenhouse gases for combined-cycle natural gas baseload generation per unit of power. For baseload generation procured under contracts, a long-term commitment is a contract of five years or longer. [As Base Quantities are characterized as baseload Electricity due to the firm 24x7 quantities to be delivered, but are] not from specified sources with qualifying greenhouse gas emissions, Base Quantities would not qualify as EPS Compliant Energy under SB 1368 as it is currently enacted.

In the event of any expiration, termination or anticipated termination of Assigned Rights and Obligations under the Assigned PPAs or a failure to assign any portion of the Initial Assigned Rights and Obligations, the Project Participant may propose to assign Replacement Assigned Rights and Obligations to J. Aron. The Project Participant has a multitude of power purchase agreements pursuant to which it purchases Electricity [if baseload Electricity] which can be purchased in compliance with the applicable EPS regulations, and SB 1368, and some wherein its rights and obligations thereunder could be assigned to J. Aron. In addition, the Project Participant expects that future [baseload Electricity] power purchase agreements will comply with EPS regulations and SB 1368, and can be negotiated to allow the assignment of the Project Participant’s rights and obligations thereunder to J. Aron.

The Project Participant is only obligated to purchase Electricity that has been purchased by J. Aron pursuant to the Assigned PPAs, or future Base Quantities, if such Base Quantities were to become EPS Compliant Energy. In the event of any expiration or termination of the Initially Assigned PPAs, wherein the Project Participant does not propose (the Project Participant has a commercially reasonable obligation to propose additional assignments, and is economically incentivized to assign PPAs), or J. Aron does not accept, Replacement Assigned Rights and Obligations under an Assigned PPA, the Electricity Supplier shall be obligated to remarket Base Quantities. **Base Quantities are not expected to be delivered or remarketed during the Initial Interest Rate Period.**

The Electricity Supplier has agreed to use Commercially Reasonable Efforts to remarket Electricity to Municipal Utilities pursuant to provisions that are intended to maintain the tax-exempt status of interest on the Bonds, but, if the Electricity Supplier cannot do so, the Electricity Supplier is also permitted to

remarket Electricity to other governmental entities in Qualified Sales and non-private business use sales, although it is not required to remarket Electricity to any such other governmental entity for a price that is anticipated to be less than the Contract Price. If the Electricity Supplier is unable to remarket Electricity in qualifying sales to Municipal Utilities or to other governmental entities in non-private business use sales, it must purchase the Electricity. Under certain circumstances and upon reaching certain thresholds that are not timely remediated, the remarketing of Electricity to entities other than Municipal Utilities could result in a Ledger Event under the Master Power Supply Agreement.

The Electricity Supplier will depend upon performance by J. Aron under the Electricity Purchase, Sale and Service Agreement to meet its Electricity remarketing obligations under the Master Power Supply Agreement, including particularly the ability of J. Aron to remarket Electricity to Municipal Utilities (as defined in the Master Power Supply Agreement) and to remediate any non-complying sales in order to avoid the occurrence of a Ledger Event under the Master Power Supply Agreement. In the event that there are any non-complying sales that have not been remediated by J. Aron within one year, the Electricity Supplier (acting at the direction of the director of the Electricity Supplier appointed by CCCFA) may appoint a third-party remarketing agent to remediate the outstanding ledger entries instead of J. Aron, subject to certain requirements. In the event that any non-complying remarketing sales of Electricity are not remediated within two years and exceed certain cumulative limits, a Ledger Event will occur, subject to certain provisions of the Master Power Supply Agreement.

If a Ledger Event occurs, J. Aron will be obligated to pay the Electricity Supplier, and the Electricity Supplier will be obligated to pay CCCFA, scheduled Additional Payments calculated to enable CCCFA to pay the Increased Interest Rate on the Series 2022[B]-1 Bonds at a rate of 8.00% per annum, and to pay the Increased Interest Rate on the Index Rate Bonds at the applicable Index Rate plus \_\_\_%. The Indenture provides that, subject to CCCFA's receipt of such Additional Payments from the Electricity Supplier, interest on the Bonds will be paid at the Increased Interest Rate after the occurrence of a Ledger Event. See "THE MASTER POWER SUPPLY AGREEMENT — Electricity Remarketing" and "— Ledger Event," "THE ELECTRICITY PURCHASE SALE AND SERVICE AGREEMENT POWER SUPPLY AGREEMENT — J. Aron as Agent" and "THE BONDS — Increased Interest Rate Upon Ledger Event."

[Discuss whether to include - In calendar year 2020, over 550 municipal electric utilities in the United States reported retail sales of electricity to residential, commercial and industrial customers totaling over 557 million MWh (source: U.S. Energy Information Administration EIA-861 data reports).]

The Clean Energy Project is expected to deliver an average of [\_\_\_\_\_]\* MWh of Assigned Prepaid Electricity each year to the Project Participant during the Initial Interest Rate Period, assuming the Initially Assigned PPAs remain in effect and there are no State legal or regulatory changes materially affecting such delivery. See "THE MASTER POWER SUPPLY AGREEMENT — Electricity Remarketing."

#### *Limitations on Exercise of Remedies*

The remedies available to CCCFA under the Master Power Supply Agreement are limited to those described herein. CCCFA has no rights to enforce the provisions of the Funding Agreement, the Electricity Purchase, Sale and Service Agreement or the guarantee of J. Aron's payment obligations under the Electricity Purchase, Sale and Service Agreement provided by GSG to the Electricity Supplier (the "EPSSA Guaranty"). Neither the Trustee nor the Bondholders have any rights to enforce the Funding Agreement, the Electricity Purchase, Sale and Service Agreement or the related EPSSA Guaranty. See "GSG, J. ARON AND THE ELECTRICITY SUPPLIER—The Electricity Supplier—*Organization*" for a description of certain

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\* Preliminary, subject to change.

consent and voting rights of the director appointed by CCCFA to the Electricity Supplier's board of directors and related covenants of CCCFA.

The remedies available to the Trustee, CCCFA and the Holders of the Bonds upon an Event of Default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory provisions and judicial decisions, the remedies provided in the Indenture may not be readily available or may be limited.

#### *Enforceability of Contracts*

The enforceability of the various legal agreements relating to the Clean Energy Project may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors or secured parties generally, by the exercise of judicial discretion in accordance with general principles of equity and by principles of equity, public policy and commercial reasonableness. The Master Power Supply Agreement and other agreements relating to the Clean Energy Project are executory contracts. If CCCFA, the Electricity Supplier, J. Aron, GSG, [the Funding Recipient], the Commodity Swap Counterparties, the Project Participant, the Investment Agreement Providers, or any of the parties with which CCCFA has contracted under such agreements (including the Master Power Supply Agreement) is involved in a bankruptcy proceeding, the relevant agreement could be discharged in return for a claim for damages against the party's estate with uncertain value. In particular, an insolvency event with respect to [the Funding Recipient] that results in a delay or a reduction in the payments due under the Funding Agreement will result in insufficient amounts being available for the payment of the Bonds, whether on a Bond Payment Date, the Mandatory Tender Date or any extraordinary mandatory redemption date. In the event that CCCFA is involved in an insolvency proceeding, the exercise of the remedies afforded to the Trustee under the Indenture may be stayed, and the availability of the Revenues necessary for the payment of the Bonds could be materially and adversely affected.

#### *No Established Trading Market*

The Bonds constitute a new issue with no established trading market. The Bonds have not been registered under the Securities Act of 1933 in reliance upon exemptions contained therein. Although the Underwriter has informed CCCFA that it currently intends to make a market in the Bonds, they are not obligated to do so and may discontinue any such market making at any time without notice. There can be no assurance as to the development or liquidity of any market for the Bonds. If an active public market does not develop, the market price and liquidity of the Bonds may be adversely affected.

#### *Loss of Tax Exemption on the Bonds*

As described below, the opinion of Bond Counsel with respect to the exclusion of interest on the Bonds from gross income for federal income tax purposes is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (the "IRS") or the courts, and is not a guarantee of a result.

The Indenture, CCCFA's Tax Agreement with respect to the Bonds, the Master Power Supply Agreement and the Clean Energy Purchase Contract contain various covenants and agreements on the part of CCCFA, the Electricity Supplier and the Project Participant that are intended to establish and maintain the tax-exempt status of the Bonds. CCCFA, the Electricity Supplier and the Project Participant have each agreed to abide by the various covenants and agreements designed to protect the tax-exempt status of the Bonds. A failure by CCCFA, the Electricity Supplier and the Project Participant to comply with such covenants and agreements could, directly or indirectly, adversely affect the tax-exempt status of the Bonds.

The IRS has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the IRS, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. It cannot be predicted whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, under current procedures the IRS may treat CCCFA as a taxpayer and the Bondholders may have no right to participate in such procedure. The commencement of an audit could adversely affect the market value and liquidity of the Bonds until the audit is concluded, regardless of the ultimate outcome.

Any loss of the tax-exempt status of the Bonds could be retroactive to the date of issuance of the Bonds and could cause all of the interest on the Bonds to be includable in gross income for purposes of federal income taxation. *The loss of the tax-exempt status of the Bonds is not a termination event under the Master Power Supply Agreement and will not result in a mandatory redemption of the Bonds.* See “THE MASTER POWER SUPPLY AGREEMENT — Ledger Event” and “TAX MATTERS.”

#### *Certain Risks of SOFR Index Rate Bonds*

The Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate described below, which is based on the Secured Overnight Financing Rate reported on the website of the Federal Reserve Bank of New York (the “*SOFR Index*”). See “THE BONDS—Interest—*Series 2022[B]-3 Bonds*” below for a description of the SOFR Index Rate and related matters.

An investment in the Series 2022[B]-3 Bonds entails risks not associated with an investment in a fixed rate security or a debt security the interest rate on which is not based on the SOFR Index. Investors should consult their own financial and legal advisors about the risks associated with an investment in the Series 2022[B]-3 Bonds and the suitability of an investment in the Series 2022[B]-3 Bonds considering their particular circumstances, and possible scenarios for economic, interest rate and other factors that may affect their investment.

Because the SOFR Index is independently published by the Federal Reserve Bank of New York based on data received from other sources, CCCFA and the Calculation Agent have no control over its determination, calculation, or publication. There can be no guarantee that the SOFR Index will not be discontinued or fundamentally altered in a manner that is materially adverse to the interests of investors in the Series 2022[B]-3 Bonds. A change in the manner in which the SOFR Index is calculated may result in a reduction of the amount of interest payable on the Series 2022[B]-3 Bonds and/or the trading prices of the Series 2022[B]-3 Bonds. If the rate at which interest on the Series 2022[B]-3 Bonds accrues on any day (*i.e.*, the SOFR Index Rate) declines to zero or becomes negative, no interest will be payable on the Series 2022[B]-3 Bonds in respect of that day.

The Federal Reserve began to publish the SOFR Index in April 2018 and has also published historical indicative data for the SOFR Index going back to August 2014. Investors should not rely on any historical changes or trends in the SOFR Index as an indicator of future changes in the SOFR Index. Also, since the SOFR Index is a relatively new market index, the Series 2022[B]-3 Bonds may have a limited trading market when issued, and an established trading market may never develop or may be illiquid. Market terms of debt securities indexed to the SOFR Index, such as the spread over the index reflected in the interest rate provisions, may evolve over time, and trading prices of the Series 2022[B]-3 Bonds may be lower than those of later-issued indexed debt securities as a result. Similarly, if the SOFR Index does not prove to be widely used in securities similar to the Series 2022[B]-3 Bonds, the trading prices of the Series 2022[B]-3 Bonds may be lower than those of bonds linked to indices that are more widely used. Investors in the Series 2022[B]-3 Bonds may not be able to sell the Series 2022[B]-3 Bonds at all or may not be able to sell the Series 2022[B]-3 Bonds at prices that will provide them with a yield comparable to

similar investments that have a developed secondary market, and may consequently suffer from increased pricing volatility and market risk.

## SECURITY FOR THE BONDS

### *The Indenture*

The Bonds are secured under the Indenture solely by a pledge of and lien on the “Trust Estate,” which is defined in the Indenture to include (a) the proceeds of the sale of the Bonds, (b) all right, title and interest of CCCFA in, to and under the Clean Energy Purchase Contract (excluding payments related to the Assigned PAYGO Electricity and the right to receive the Administrative Fee), (c) the Revenues, (d) any Termination Payment or the right to receive such Termination Payment, (e) all right, title and interest of CCCFA in, to and under the Receivables Purchase Provisions, including payments received from the Electricity Supplier pursuant thereto, (f) all right, title and interest of CCCFA in, to and under each Interest Rate Swap and the Interest Rate Swap Receipts, and (g) the Pledged Funds (but excluding the Administrative Fee Fund and Rebate Payments held in any Fund or Account), including the investment income, if any, thereof, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

The pledge of and lien on the Trust Estate in favor of the Bonds is subject to (x) the provisions of the Indenture permitting the application of the Trust Estate, the proceeds of the Bonds and the Revenues for the purposes and on the terms and conditions set forth therein, including the first charge on the Revenues to pay the Commodity Swap Payments and the other Operating Expenses of the Clean Energy Project, (y) a prior lien on and security interest in the Commodity Reserve Account and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparties and Project Participant, and (z) the pledge of the Shortfall Termination Account (as defined herein) in favor of the Project Participant. Any Additional Termination Payment and the right to receive any Additional Termination Payment that is payable under the Master Power Supply Agreement is not pledged as a part of the Trust Estate.

The term “Revenues” is defined in the Indenture to include (a) all revenues, income, rents, user fees or charges, and receipts derived or to be derived by CCCFA from or attributable or relating to the ownership and operation of the Clean Energy Project, including all revenues attributable or relating to the Clean Energy Project or to the payment of the costs thereof received or to be received by CCCFA under the Clean Energy Purchase Contract and the Master Power Supply Agreement or otherwise payable to the Trustee for the account of CCCFA for the sale and/or transmission of Electricity or otherwise with respect to the Clean Energy Project, (b) interest received or to be received on any moneys or securities (other than moneys or securities held in the Acquisition Account in the Project Fund, moneys or securities held in the Redemption Account in the Debt Service Fund, or that portion of moneys in the Operating Fund required for Rebate Payments) held pursuant to the Indenture and paid or required to be paid into the Revenue Fund, (c) any Commodity Swap Receipts received by the Trustee on behalf of CCCFA, and (d) any Subsidy Payments (as defined in APPENDIX C) received by the Trustee on behalf of CCCFA, in accordance with the terms of the Indenture. The term “Revenues” does not include (i) any amounts received under a Clean Energy Purchase Contract with respect to Assigned PAYGO Electricity, (ii) any Termination Payment or Additional Termination Payment paid pursuant to the Master Power Supply Agreement, (iii) any amounts received from the Electricity Supplier that are required to be deposited into the Remarketing Reserve Fund and into the Debt Service Account pursuant to the terms of the Indenture, (iv) any Assignment Payment (as defined in APPENDIX C) received from the Electricity Supplier, (v) Interest Rate Swap Receipts, (vi) any amounts paid by a Project Participant in respect of the Administrative Fee, (vii) payments received from the Electricity Supplier pursuant to the Receivables Purchase Provisions, (viii) payments received under the Clean Energy Project Operational Services Agreement, and (ix) any Seller Swap MTM Payment payable to CCCFA, all of which are to be deposited pursuant to the provisions of the Indenture. The

Revenues are to be applied in accordance with the priorities established under the Indenture, including the prior payment from the Revenues of the Operating Expenses of the Clean Energy Project. See “Flow of Funds” below.

The term “*Operating Expenses*” is defined in the Indenture to mean, to the extent properly allocable to the Clean Energy Project: (a) CCCFA’s expenses for operation of the Clean Energy Project, including all Rebate Payments; Commodity Swap Payments; costs, collateral deposits and other amounts (other than Commodity Swap Payments) necessary to maintain the CCCFA Commodity Swaps; and payments required under the Master Power Supply Agreement (which may, under certain circumstances, include imbalance charges and other miscellaneous payments) or required to be incurred under or in connection with the performance of CCCFA’s obligations under the Clean Energy Purchase Contract, including amounts due to the Project Participant under the Clean Energy Purchase Contract to the extent that (i) J. Aron fails to pay when due any J. Aron Prepay Payment, and (ii) the Project Participant makes a payment for such amounts to the applicable APC Party, upon notice of which CCCFA shall make a payment to the Project Participant in the amount of such non-payment (an “*Assigned Product Reimbursement Payment*”); (b) any other current expenses or obligations required to be paid by CCCFA under the provisions of the Indenture (other than Debt Service on the Bonds, deposits to the Commodity Reserve Account or the Debt Service Reserve Account, any Cost of Acquisition, and any amounts for the repurchase of Call Receivables or Put Receivables) or by law or required to be incurred under or in connection with the performance of CCCFA’s obligations under the Clean Energy Purchase Contract; (c) fees payable by CCCFA with respect to any Remarketing Agreement; (d) the fees and expenses of the Fiduciaries; (e) reasonable accounting, legal and other professional fees and expenses, and all other reasonable administrative and operating expenses of CCCFA, which are incurred by CCCFA with respect to the Bonds, the Indenture, or the Clean Energy Project, including but not limited to those relating to the administration of the Trust Estate and compliance by CCCFA with its continuing disclosure obligations, if any, with respect to the Bonds; and (f) the costs of any insurance premiums incurred by CCCFA, including, without limitation, directors and officers liability insurance; allocable to the Clean Energy Project; provided that, for purposes of the transfers from the Revenue Fund to the Operating Fund described under the heading “*Flow of Funds*”, Operating Expenses shall not include any of the foregoing administrative expenses, fees or other costs described in the foregoing clauses (a) through (f) that are paid from funds on deposit in the Administrative Fee Fund. Litigation judgments and settlements and indemnification payments in connection with the payment of any litigation, judgment or settlement, and Extraordinary Expenses (as defined in APPENDIX C) are not Operating Expenses.

THE BONDS DO NOT CONSTITUTE GENERAL OBLIGATIONS OR INDEBTEDNESS OF CCCFA, THE MEMBERS, THE PROJECT PARTICIPANT OR ITS MEMBERS, THE STATE, OR ANY POLITICAL SUBDIVISION, OF THE STATE. THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF CCCFA PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE, IN THE MANNER AND TO THE EXTENT PROVIDED FOR IN THE INDENTURE. CCCFA HAS NO TAXING POWER.

THE OBLIGATIONS OF THE PROJECT PARTICIPANT TO MAKE PAYMENTS TO CCCFA UNDER THE CLEAN ENERGY PURCHASE CONTRACT ARE NOT, NOR SHALL THEY BE CONSTRUED AS, A GUARANTY OR ENDORSEMENT OF OR A SURETY FOR, THE BONDS. SUCH OBLIGATIONS OF THE PROJECT PARTICIPANT ARE NOT GENERAL OBLIGATIONS OF THE PROJECT PARTICIPANT, AND ARE PAYABLE SOLELY FROM THE REVENUES DERIVED FROM THE SALES OF ENERGY TO ITS CUSTOMERS. THE INDENTURE DOES NOT MORTGAGE THE CLEAN ENERGY PROJECT OR ANY TANGIBLE PROPERTIES OR ASSETS OF CCCFA OR THE PROJECT PARTICIPANT.

See APPENDIX C for definitions of certain terms, and see APPENDIX D for a further description of certain provisions of the Indenture.

### *Flow of Funds*

All Revenues are required by the Indenture to be deposited promptly by the Trustee upon receipt thereof into the Revenue Fund. In each calendar month (“Month”) during which there is a deposit of Revenues into the Revenue Fund (but in no case later than the respective dates set forth below), the Trustee is required to credit to or transfer to the required party for deposit in the funds and accounts indicated below, as applicable, and otherwise make payments as appropriate and to the extent available from amounts held in the Revenue Fund, in the following order the amounts set forth below (such application to be made in such a manner so as to assure good funds are available on the respective dates set forth below):

*First*, to the Operating Fund, not later than the [24]th day of such Month, the amount, if any, required so that the balance therein is equal to the amount necessary for the payment of Commodity Swap Payments coming due for such Month;

*Second*, to the Debt Service Fund, not later than the last Business Day of such Month, for the credit of the Debt Service Account an amount equal to the greater of (a) the Scheduled Debt Service Deposit, as set forth in the Indenture, or (b) the amount necessary to cause an amount equal to the cumulative unpaid Scheduled Debt Service Deposits due through such date to be on deposit therein (without credit for undisbursed Interest Rate Swap Receipts on deposit therein);

*Third*, to the Commodity Reserve Account in the Project Fund, not later than the last Business Day of such Month, the amount, if any, required so that the balance in the Commodity Reserve Account is at least equal to the Minimum Amount;

*Fourth*, to the Debt Service Fund, not later than the last Business Day of such Month, for deposit in the Debt Service Reserve Account, the amount, if any, required so that the balance in such Debt Service Reserve Account shall equal the Debt Service Reserve Requirement related thereto as of the last day of the then current Month; and

*Fifth*, to the Electricity Supplier, not later than the last Business Day of such Month, the amount, if any, required for the repurchase of Call Receivables and Put Receivables, and the payment of interest on all receivables sold to the Electricity Supplier pursuant to the Receivables Purchase Provisions.

If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified in the Indenture, the Trustee shall immediately notify CCCFA of such deficiency and the Trustee shall (a) if CCCFA has not previously done so, cause CCCFA to suspend all deliveries of all quantities of Electricity under the Clean Energy Purchase Contract if the Project Participant is in default thereunder, and (b) promptly give notice to the Electricity Supplier to follow the remarketing provisions set forth in the Master Power Supply Agreement.

In each Month during which (a) there is a deposit of Revenues into the Revenue Fund and (b) payment of a Principal Installment is due, after making such transfers, credits and deposits as described in the first paragraph of this section “Flow of Funds,” and after the applicable Principal Installment payment date, the Trustee is required to credit to the General Reserve Fund the remaining balance in the Revenue Fund. See “Revenues and Revenue Fund” and “Payments into Certain Funds” in APPENDIX D.

As noted above, certain amounts are pledged as a part of the Trust Estate but do not constitute Revenues and are not deposited into the Revenue Fund, including (a) any Additional Termination Payment received under the Master Power Supply Agreement, which is to be deposited into the Shortfall Termination Account and immediately transferred to the Project Participant, (b) any payments received from the

Electricity Supplier under the Receivables Purchase Provisions, which are to be deposited into the Debt Service Account, the Commodity Reserve Account, the Redemption Account, or the Operating Fund as provided in the Indenture, (c) Ledger Event Payments shall be deposited directly into the Debt Service Account as provided in the Indenture, (d) amounts representing the Administrative Fee, together with any amounts paid by the Project Participants under a Clean Energy Project Operational Services Agreement, shall be paid as received by CCCFA into the Administrative Fee Fund, and (e) any Interest Rate Swap Receipts, which are to be deposited into the Debt Service Account.

#### *Debt Service Account*

The Indenture establishes a Debt Service Account which is held by the Trustee. The amounts deposited into the Debt Service Account under the Indenture must be held in such Account and applied to the payment of Debt Service payable on each Bond Payment Date and the Interest Rate Swap Payments payable on each payment date therefor. Amounts on deposit in the Debt Service Account will be invested pursuant to the Debt Service Account Investment Agreement (defined below), which will permit scheduled withdrawals to pay debt service on the Bonds and, in the case of extraordinary redemption, to pay the Redemption Price without penalty or market value adjustments.

In the event that, two Business Days next preceding the final Maturity Date of the Bonds, the Trustee determines that (i) the balance in the Commodity Reserve Account is less than the Minimum Amount, and/or (ii) the balance in the Debt Service Reserve Account is less than the Debt Service Reserve Requirement and sufficient funds will not be available to pay the principal of and interest on the Bonds coming due on such final Maturity Date, the Trustee is required to prepare and deliver to the Electricity Supplier the Put Option Notice pursuant to the Receivables Purchase Provisions with respect to Put Receivables, provided that the amount of Put Receivables sold pursuant to the Receivables Purchase Provisions are not in excess of the aggregate amount required, when taking into account other available funds under the Indenture, to (iii) restore the balance in the Commodity Reserve Account to an amount equal to the Minimum Amount, and (iv) pay the maturing principal amount of and interest on the Bonds in full. On or before two Business Days next preceding such final Maturity Date, the Trustee is required to deliver to the Electricity Supplier the bill of sale and certificates required by the Receivables Purchase Provisions. Under the Indenture, the Trustee is authorized to sell the Put Receivables then owed by the Project Participant under the Clean Energy Purchase Contract pursuant to the Receivables Purchase Provisions (as contemplated by the Indenture) and to take all actions on its part necessary in connection therewith. All amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Put Receivables sold pursuant to the Indenture to fund amounts then due under the Commodity Swaps must be deposited in the Commodity Reserve Account, and all amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Put Receivables sold pursuant to the Indenture to fund Debt Service must be deposited in the Debt Service Account and applied to payment of principal of and interest on the Bonds on the final Maturity Date.

#### *Debt Service Reserve Account*

The Indenture establishes a Debt Service Reserve Account which is held by the Trustee. Amounts in the Debt Service Reserve Account must be applied only (a) to make required monthly deposits to the Debt Service Account to pay debt service on the Bonds when other available funds are insufficient or (b) in the event of the defeasance of any Bonds, to be held for the payment of the principal or Redemption Price, if applicable, and interest on the Bonds being defeased. Whenever the moneys on deposit in the Debt Service Reserve Account exceed the Debt Service Reserve Requirement, the Trustee is required to transfer such excess to the Revenue Fund.

The Debt Service Reserve Requirement is \$[\_\_\_\_\_]\*, which is approximately equal to 200% of the maximum monthly deposit to be made to the Debt Service Account during the Initial Interest Rate Period from the amounts payable by the Project Participant under the Clean Energy Purchase Contract. On the date of issuance of the Bonds, CCCFA will deposit an amount equal to the Debt Service Reserve Requirement into the Debt Service Reserve Account, which amount will be invested pursuant to the Debt Service Reserve Account Investment Agreement. See “ESTIMATED SOURCES AND USES OF FUNDS” above. See also “*Investment of Funds*” below.

#### *Commodity Reserve Account*

CCCFA will deposit in the Commodity Reserve Account a portion of the proceeds of the Bonds in an amount equal to \$[\_\_\_\_\_]\* (the “*Minimum Amount*”). Amounts credited to the Commodity Reserve Account shall be applied by the Trustee to (i) the payment of Commodity Swap Payments in the event the amounts on deposit in the Operating Fund are not sufficient to make such payments, and (ii) any Assigned Product Reimbursement Payment, to the extent that the Trustee determines on the Business Day prior to the transfer in any month into the Operating Fund pursuant to the Indenture that, after taking into account amounts to be transferred into the Operating Fund pursuant to the Indenture, there will not be sufficient amounts available in the Operating Fund for payments of such Assigned Product Reimbursement Payment; *provided that*, (a) any amounts in the Commodity Reserve Account in excess of the Minimum Amount shall be transferred by the Trustee to the Revenue Fund, and (b) any amounts remaining on deposit in the Commodity Reserve Account on the final date for payment of the principal of the Bonds, whether upon maturity, redemption or acceleration, shall be applied to make such payment. The amount deposited in the Commodity Reserve Account will be invested pursuant to the Commodity Reserve Account Investment Agreement. See “THE MASTER POWER SUPPLY AGREEMENT — *Receivables Purchase Provisions*” and “— *Investment of Funds*” below.

#### *Termination Payment; Shortfall Termination Account*

In the event of an early termination of the Master Power Supply Agreement, CCCFA is obligated to provide written notice of such early termination to the Trustee and direct the Electricity Supplier to pay the Termination Payment and, if applicable, the Additional Termination Payment directly to the Trustee for the account of CCCFA. The Trustee shall deposit (i) the Additional Termination Payment into the Shortfall Termination Account, and (ii) the balance of the Termination Payment into the Redemption Account. All amounts deposited into the Shortfall Termination Account shall be immediately transferred to the Project Participant pursuant to wire instructions delivered by the Project Participant to the Trustee in writing and kept on file by the Trustee.

All amounts received by the Trustee pursuant to the Receivables Purchase Provisions in respect of Put Receivables sold pursuant to the Indenture to fund the redemption of the Bonds must be deposited in the Redemption Account and applied to payment of the Redemption Price of and interest on the Bonds on the applicable redemption date. Amounts deposited into the Redemption Account must be applied by the Trustee to the payment of the Redemption Price of and interest on the Bonds pursuant to the Indenture as described under “THE BONDS — *Redemption — Extraordinary Mandatory Redemption.*”

The pledge of and lien on the Trust Estate in favor of the Bonds is subject to the pledge of the Shortfall Termination Account in favor of the Project Participant. The Additional Termination Payment is not included as Revenues pledged to the payment of debt service on the Bonds.

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\* Preliminary, subject to change.

### *Administrative Fee Fund*

All Administrative Fees, together with any amounts paid by the Project Participant pursuant to a Clean Energy Project Operational Services Agreement, are required to be deposited by the Trustee into the Administrative Fee Fund. The Trustee shall apply amounts on deposit in the Administrative Fee Fund to pay Operating Expenses promptly upon receipt of a Written Request of CCCFA directing such payment. In the event amounts on deposit in the Administrative Fee Fund are insufficient to make any payments directed in the Written Request of CCCFA, the Trustee is required to promptly notify the Project Participant, at its address shown in the Indenture, of the fact and amount of such deficiency.

### *Restriction on Additional Obligations*

Except as expressly permitted under the terms of the Indenture, for so long as the Bonds are Outstanding, CCCFA shall not, without a Rating Confirmation, issue any bonds, notes, debentures or other evidences of indebtedness of similar nature payable from or secured by a pledge and assignment of the Trust Estate, other than the Bonds and bonds, notes, debentures or other evidences of indebtedness issued to refund Outstanding Bonds, or otherwise incur obligations other than those contemplated by the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the CCCFA Custodial Agreements, the Commodity Swaps, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments), payable out of or secured by a pledge or assignment of, or lien on, the Trust Estate; and, except as expressly permitted under the terms of the Indenture, shall not, without a Rating Confirmation, create or cause to be created any lien or charge on the Trust Estate except as provided in or contemplated by the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the CCCFA Custodial Agreements, the Commodity Swaps, the Interest Rate Swap and any documents or agreements relating to any of the foregoing (including, but not limited to, obligations under Qualified Investments); *provided, however*, that nothing contained in the Indenture shall prevent CCCFA from entering into or issuing, if and to the extent permitted by law (a) evidences of indebtedness (1) payable out of moneys in the Project Fund as part of the Cost of Acquisition or (2) payable out of or secured by a pledge and assignment of the Trust Estate or any part thereof to be derived on and after such date as the pledge of the Trust Estate provided in the Indenture shall be discharged and satisfied as provided therein, or (b) Commodity Swaps and Interest Rate Swaps upon the terms and conditions set forth in the Indenture.

### *Amendment of Indenture*

CCCFA and the Trustee may, subject to the conditions and restrictions in the Indenture, enter into a Supplemental Indenture or Indentures without the consent of the Bondholders which, for certain purposes may only be accomplished upon receipt of a Rating Confirmation. See “Supplemental Indenture Not Requiring Consent of Bondholders,” “General Provisions” and “Powers of Amendment” in APPENDIX D hereto.

### *Investment of Funds*

Subject to the provisions of the Indenture, amounts on deposit in the Funds and Accounts may be invested in, among other things, guaranteed investment contracts, forward delivery agreements or similar agreements providing for a specified rate of return over a specified time period with providers (or their guarantors) rated (or whose financial obligations to CCCFA receive credit support from an entity rated) at the time the investment is made at least at the same credit rating level as the Funding Recipient. See APPENDIX C — DEFINITIONS OF CERTAIN TERMS and “Investment of Certain Funds” in APPENDIX D.

On the date of delivery of the Bonds, it is expected that the Trustee will enter into (a) an investment agreement or forward delivery agreement with respect to the Debt Service Account (the “*Debt Service Account Investment Agreement*”), (b) an investment agreement or forward delivery agreement with respect to the Commodity Reserve Account (the “*Commodity Reserve Account Investment Agreement*”), and (c) an investment agreement or forward delivery agreement with respect to the Debt Service Reserve Account (the “*Debt Service Reserve Account Investment Agreement*” and, together with the Commodity Reserve Account Investment Agreement and the Debt Service Account Investment Agreement, the “*Investment Agreements*”). Each Investment Agreement will have a term coterminous with the Initial Interest Rate Period and is required to meet all of the criteria of a Qualified Investment under the Indenture and is expected to be bid out on the day of Bond pricing to qualified investment providers.

Required qualifications for the initial Investment Agreement providers include: (a) a minimum credit rating requirement for the provider (or its guarantor) of at least that of the Funding Recipient, which as of the date of this Official Statement is “ ” by Moody’s, (b) a requirement that upon a credit rating withdrawal, suspension or downgrade (a “Credit Downgrade”) of the Investment Agreement provider (or its guarantor) below the lower of (i) “A2” by Moody’s or (ii) the then-current credit rating of the Funding Recipient, the Investment Agreement provider will provide a credit remedy, such as providing credit support, or CCCFA will have the right to terminate such agreement and (c) a requirement that upon a Credit Downgrade of the provider (or its guarantor) below the lower of (i) “Baa3” by Moody’s or (ii) the then-current credit rating of the Funding Recipient, CCCFA will have the option to terminate the agreement.

Required qualifications for any initial Investment Agreement that is a forward delivery agreement include: (a) a minimum credit rating requirement for the provider (or its guarantor) of “A2” by Moody’s, (b) a requirement that upon a Credit Downgrade of the provider (or its guarantor) below the lower of (i) “Baa3” by Moody’s or (ii) the then-current credit rating of GSG, CCCFA will have the option to terminate the agreement, (c) opinions of counsel, domestic and foreign, where applicable, that the securities delivered in connection with the agreement do not constitute property of the forward delivery agreement provider under bankruptcy or insolvency proceedings, and will not be subject to automatic stay and will not be recoverable as a voidable preference in the event of bankruptcy/insolvency of the provider, and (d) a limitation that the only securities the forward delivery agreement provider is allowed to deliver are non-callable, non-prepayable (i) direct obligations of the United States government or any of its agencies that are unconditionally guaranteed as to principal and interest by the United States of America, or (ii) senior debt obligations of any agency of the United States government.

If an Investment Agreement terminates, all invested funds are returned to the Trustee and a market value adjustment payment is made or received, as applicable.

Each Investment Agreement will provide for a fixed interest rate to be paid on the funds invested. The Debt Service Account Investment Agreement will provide for scheduled withdrawals in connection with each Bond Payment Date. The Commodity Reserve Account Investment Agreement and Debt Service Reserve Account Investment Agreement will permit (a) withdrawals from the Commodity Reserve Account to make up payment shortfalls to a Commodity Swap Counterparty, and in the event J. Aron fails to make payments due under the Assigned PPAs, and there is a deficiency in the Operating Account, withdrawals to repay the Project Participant under the Clean Energy Purchase Contract and (b) withdrawals from the Debt Service Reserve Account to cure any deficiencies in the Debt Service Account. Upon transaction termination, whether by extraordinary mandatory redemption or final maturity, the funds invested under the Investment Agreements will be used to pay the redemption price or debt service due on the Bonds.

#### *Enforcement of Project Agreements*

*Clean Energy Purchase Contract.* CCCFA has covenanted in the Indenture that it will enforce the provisions of the Clean Energy Purchase Contract, as well as any other contract or contracts entered into relating to the Clean Energy Project, and that it will duly perform its covenants and agreements thereunder.

CCCFA has also covenanted to exercise promptly its right to suspend all Electricity deliveries under the Clean Energy Purchase Contract if the Project Participant fails to pay when due any amounts owed thereunder and to promptly give notice to the Electricity Supplier to follow provisions set forth in the Remarketing Exhibit to the Master Power Supply Agreement for each Month of such suspension with respect to the quantities of Electricity for which deliveries have been suspended.

In the event that the Project Participant makes a Remarketing Election in respect of any Reset Period, then CCCFA will promptly give notice to the Electricity Supplier to follow the provisions set forth in the Remarketing Exhibit to the Master Power Supply Agreement for each month of such Reset Period with respect to any quantities of Electricity that would otherwise have been delivered to the Project Participant. See “THE RE-PRICING AGREEMENT.”

CCCFA has further covenanted that it will not consent or agree to or permit any termination or rescission of, any assignment or novation (in whole or in part) by the Project Participant of, or any amendment to, or otherwise take any action under or in connection with, the Clean Energy Purchase Contract that will impair the ability of CCCFA to comply during the current or any future year with its covenant regarding the collection of fees and charges pursuant to the Indenture. Under the Indenture, upon the satisfaction of certain conditions, including delivery of a Rating Confirmation from each rating agency then rating the Bonds, CCCFA may amend the Clean Energy Purchase Contract or agree to an assignment or novation of all or a portion of the Project Participant’s rights and obligations under the Clean Energy Purchase Contract.

*Electricity Remarketing.* If, after a scheduled monthly deposit to the Debt Service Account, the balance therein is below the cumulative Scheduled Debt Service Deposits for such month as specified in the Indenture, the Trustee must immediately notify CCCFA of such deficiency, and the Trustee must (a) if CCCFA has not previously done so, cause CCCFA to suspend all deliveries of all quantities of Electricity under the Clean Energy Purchase Contract to the Project Participant, and (b) promptly give notice to the Electricity Supplier to follow the provisions set forth in the Remarketing Exhibit to the Master Power Supply Agreement. While the Electricity Supplier is remarketing Electricity under the Master Power Supply Agreement with advance notice from CCCFA or the Trustee, it is generally obligated to pay to CCCFA the day-ahead price (less a discount, which may vary under certain circumstances) for the point where the Electricity would otherwise be delivered. See “MASTER POWER SUPPLY AGREEMENT — Electricity Remarketing.”

*Event of Default; Additional Actions.* CCCFA has covenanted that, if an Event of Default has occurred and is continuing under the Indenture, CCCFA will, upon the demand of the Trustee (i) take such additional actions on its part as shall be necessary to cause the Project Participant to make payments of all amounts due under the Clean Energy Purchase Contract to the Trustee, (ii) take such additional actions on its part as shall be necessary to cause a Commodity Swap Counterparty to make payment of all amounts due under a Commodity Swap directly to the Trustee, (iii) take such additional actions on its part as shall be necessary to cause the Interest Rate Swap Counterparty to make payment of all amounts due under the Interest Rate Swap directly to the Trustee, (iv) execute and deliver such additional instruments that may be necessary to establish or confirm CCCFA’s pledge and assignment to the Trustee of its rights and remedies afforded the CCCFA under the Clean Energy Purchase Contract, and (v) pay over or cause to be paid over to the Trustee any Revenues which have not been paid directly to the Trustee as promptly as practicable after receipt thereof. In addition, to secure its obligations under the Indenture, CCCFA has irrevocably pledged and collaterally assigned to the Trustee CCCFA’s rights to issue notices (including notices to direct the remarketing of Electricity) and to take any other actions that CCCFA is required or permitted to take under the Master Power Supply Agreement, the Receivables Purchase Provisions, the Clean Energy Purchase Contract, the Commodity Swaps, and the Interest Rate Swap, and, while an Event of Default has occurred and is continuing under the Indenture, the Trustee is authorized and directed, and has the authority,

to take any such actions as it deems necessary under the Master Power Supply Agreement, the Receivables Purchase Provisions, the Clean Energy Purchase Contract and the Interest Rate Swap. Notwithstanding such authorization, CCCFA shall retain, in the absence of any conflicting action by the Trustee while an Event of Default has occurred and is continuing, the right and obligation to exercise any rights which it has pledged and collaterally assigned to the Trustee in accordance with the foregoing; provided, however, if an Event of Default has occurred and is continuing, the Trustee shall have the right to notify the Issuer to cease exercising such rights and, upon receipt of such notice with a copy provided to the Electricity Supplier under the Master Power Supply Agreement and the Project Participant under the Clean Energy Purchase Contract, the Trustee shall have exclusive authority to exercise such rights until such time as the Event of Default has been cured pursuant to the terms of this Indenture or the Trustee issues a subsequent notice otherwise. The Master Power Supply Agreement, the Clean Energy Purchase Contract and the Commodity Swaps may be amended at any time for changes in Delivery Points as provided therein, without the consent of the Bondholders or any parties other than those to the relevant agreement, and without the provision of opinions or other process under the Indenture.

*Master Power Supply Agreement.* CCCFA has covenanted in the Indenture that it will enforce the provisions of the Master Power Supply Agreement and that it will duly perform its covenants and agreements under the Master Power Supply Agreement.

The Trustee will promptly notify CCCFA of any payment default that has occurred and is continuing on the part of the Electricity Supplier under the Master Power Supply Agreement. CCCFA will provide the Trustee with Written Notice of the Early Termination Payment Date (a) on the date on which a Failed Remarketing (defined below) occurs, and (b) in all other cases, not more than five Business Days after such date is determined.

CCCFA has further covenanted that it will not consent or agree to or permit any rescission or assignment of or amendment to or otherwise take any action under or in connection with the Master Power Supply Agreement which would in any manner materially impair or materially adversely affect its rights thereunder or the rights or security of the Bondholders under the Indenture; *provided*, that the Master Power Supply Agreement may be assigned or amended without Bondholder consent upon receipt of a Rating Confirmation with respect to such assignment or amendment.

*Interest Rate Swap.* Amounts due to CCCFA under the Interest Rate Swap are payable directly to the Trustee. Pursuant to the Indenture, Interest Rate Swap Receipts are to be deposited by the Trustee in the Debt Service Account. CCCFA has covenanted in the Indenture that:

- it will enforce the provisions of the Interest Rate Swap and duly perform its covenants and agreements thereunder,
- it will not consent or agree to or permit any termination or rescission of or amendment to or otherwise take any action under or in connection with the Interest Rate Swap that will impair the ability of CCCFA to comply during the current or any future year with the provisions of the Indenture, and
- it will not exercise any right to terminate the Interest Rate Swap unless it either (i) has entered into a replacement Interest Rate Swap that meets requirements specified in the Indenture or (ii) in all other cases, the Master Power Supply Agreement will terminate prior to or as of such early termination date.

CCCFA may enter into a replacement Interest Rate Swap at any time by delivering a Rating Confirmation to the Trustee. If the Interest Rate Swap is subject to termination by either party in accordance

with its terms, then (A) CCCFA may terminate the Interest Rate Swap if CCCFA has the right to do so, and (B) CCCFA may enter into a replacement Interest Rate Swap with an alternate Interest Rate Swap Counterparty without a Rating Confirmation, but only if the replacement Interest Rate Swap is identical in all material respects to the existing Interest Rate Swap, except for the identity of the Interest Rate Swap Counterparty, and (1) the alternate Interest Rate Swap Counterparty (or its credit support provider under the Interest Rate Swap) is then rated at least the lower of (a) the Minimum Rating or (b) the rating then assigned by each Rating Agency to the Bonds, or (2) the Interest Rate Swap Counterparty provides such collateral and security arrangements as CCCFA shall determine to be necessary.

## SOURCES AND USES OF FUNDS

The sources and uses of funds in connection with the issuance of the Bonds are approximately as follows:

SOURCES:	
Par Amount	\$
Original Issue Premium	
Total Sources	<u>\$</u>
USES:	
Deposit to Project Fund <sup>1</sup>	\$
Deposit to Debt Service Reserve Account	
Deposit to Commodity Reserve Account	
Costs of Issuance <sup>2</sup>	
Total Uses	<u>\$</u>

<sup>1</sup> Includes the prepayment amount, J. Aron’s structuring fee, and capitalized interest on the Bonds (which will be transferred to the Debt Service Account).

<sup>2</sup> Includes management, consulting, underwriting, rating agency, Trustee, financial advisor, legal and other fees and other expenses related to the issuance of the Bonds and the acquisition of the Clean Energy Project.

## THE BONDS

### *General*

The Bonds will mature (subject to redemption as described below) on the dates and in the principal amounts shown on the inside cover page of this Official Statement. The Bonds will be initially issued in denominations of \$5,000 and any integral multiples thereof (an “*Authorized Denomination*”). The Bonds will be initially issued in book-entry only form through the facilities of The Depository Trust Company, New York, New York (“*DTC*”). See “THE BONDS — Book-Entry System” and APPENDIX G for a description of DTC and its book-entry system.

### *Interest*

During the Initial Interest Rate Period, the Bonds will bear interest as described below.

#### *Series 2022[B]-1 Bonds*

During the Initial Interest Rate Period, the Series 2022[B]-1 Bonds will bear interest in a Term Rate Period, with the Series 2022[B]-1 Bonds of each maturity bearing interest at the fixed rates shown on the inside cover page of this Official Statement. During the Initial Interest Rate Period, interest on the Series

2022[B]-1 Bonds will be payable semiannually on [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1 of each year, commencing [\_\_\_\_\_] 1, 202[ ]\*. During the Initial Interest Rate Period, interest on the Series 2022[B]-1 Bonds will be computed on the basis of a 360-day year of twelve 30-day months.

### ***Series 2022[B]-2 Bonds***

The Initial Interest Rate Period for the Series 2022[B]-2 Bonds will be a SIFMA Index Rate Period, and the Series 2022[B]-2 Bonds will bear interest at the SIFMA Index Rate determined as described below during the SIFMA Index Rate Period.

*Interest Payments.* Interest on each Series 2022[B]-2 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [\_\_\_\_\_] 202[ ]\*, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

*Determination of the SIFMA Index Rate.* One Business Day prior to the Initial Issue Date of the Series 2022[B]-2 Bonds, the SIFMA Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, (A) the SIFMA Index Rate shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each Wednesday or, if such Wednesday is not a Business Day, the Business Day immediately succeeding such Wednesday, and (B) the SIFMA Index Rate shall be determined by the Calculation Agent at or before 12:00 noon, New York City time, on each Index Rate Reset Date. All percentages resulting from any step in the calculation of interest on the Series 2022[B]-2 Bonds while in the SIFMA Index Rate Period will be rounded to six decimal places (with 0.0000005 being rounded up to 0.000001).

*SIFMA Index Rate.* The SIFMA Index Rate is a variable per annum rate of interest equal to the sum of (i) the SIFMA Index then in effect plus (ii) the Applicable Spread.

*Applicable Spread.* The Applicable Spread for the Series 2022[B]-2 Bonds is the margin added to the SIFMA Index as shown on the inside cover page of this Official Statement for the Series 2022[B]-2 Bonds. The Applicable Spread shall remain constant for the duration of the SIFMA Index Rate Period.

*SIFMA Index.* “*SIFMA Index*” means the SIFMA Municipal Swap Index, which, for purposes of an Index Rate Reset Date for a Series of Bonds bearing interest at a SIFMA Index Rate, will be the level of such index which is issued weekly and which is compiled from the weekly interest rate resets of tax exempt variable rate issues included in a database maintained by Refinitiv Global Markets, Inc. which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day, such date being the same day the SIFMA Swap Index is expected to be published or otherwise made available to the Calculation Agent. If the SIFMA Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date selected and designated by CCCFA in compliance with the Indenture. Any substitute or replacement Index Rate is required to be consistent with any corresponding substitute or replacement index rate designated pursuant to the Interest Rate Swap.

*Index Rate Reset Date.* The Index Rate Reset Date for the SIFMA Index Rate applicable to the Series 2022[B]-2 Bonds shall be [Thursday] of each week or, if [Thursday] is not a Business Day, the next succeeding Business Day.

### ***Series 2022[B]-3 Bonds***

The Initial Interest Rate Period for the Series 2022[B]-3 Bonds will be a SOFR Index Rate Period, and the Series 2022[B]-3 Bonds will bear interest at the SOFR Index Rate determined as described below during the SOFR Index Rate Period.

*Interest Payments.* Interest on each Series 2022[B]-3 Bond is payable on the first Business Day of each month, commencing with the first Business Day of [\_\_\_\_\_] 202[ ]\*, and on the Mandatory Purchase Date. Such interest shall be calculated on the basis of a 365- or 366-day year, as applicable, and the actual number of days elapsed.

*Determination of the SOFR Index Rate.* One Business Day prior to the Initial Issue Date of the Series 2022[B]-3 Bonds, the SOFR Index Rate shall be calculated by the Calculation Agent and shall be in effect from and including the Initial Issue Date to (but not including) the first Index Rate Reset Date. Thereafter, (a) the SOFR Index shall be determined by the Calculation Agent by 4:00 p.m., New York City time, on each SOFR Publish Date and (b) the Calculation Agent shall determine and provide to the Trustee the SOFR Index Rate at or before 12:00 noon, New York City time, on each SOFR Effective Date. The amount of interest due on the Series 2022[B]-3 Bonds on any Interest Payment Date shall be calculated on each SOFR Interest Calculation Date on the basis of the actual number of days in the SOFR Accrual Period immediately preceding such Interest Payment Date. All percentages resulting from any step in the calculation of interest on the Series 2022[B]-3 Bonds while in the SOFR Index Rate Period will be rounded, to six decimal places (with 0.0000005 being rounded up to 0.000001).

*SOFR Index Rate.* The SOFR Index Rate is a daily variable interest rate equal to the sum of (a) the product of the SOFR Index and the Applicable Factor plus (b) the Applicable Spread on each day of a SOFR Effective Period not to exceed the Maximum Rate.

*Applicable Factor.* The Applicable Factor is the percentage of the SOFR Index shown on the inside cover page of this Official Statement for the Series 2022[B]-3 Bonds. The Applicable Factor will remain constant for the duration of the SOFR Index Rate Period.

*Applicable Spread.* The Applicable Spread for the Series 2022[B]-3 Bonds is the margin added to the product of the SOFR Index and the Applicable Factor shown on the inside cover page of this Official Statement. The Applicable Spread will remain constant for the duration of the SOFR Index Rate Period.

*Business Day.* For purposes of determining the SOFR Index Rate, “*Business Day*” means any day other than (a) Saturday or Sunday, (b) a day on which commercial banks in New York, New York are authorized by law or executive order to close, (c) a day on which the New York Stock Exchange, Inc. is closed, (d) a day on which the payment system of the Federal Reserve System is not operational, or (e) any day that the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the purposes of trading United States government securities.

*Index Rate Reset Date.* The Index Rate Reset Date for the Series 2022[B]-3 Bonds is each SOFR Effective Date.

*NY Federal Reserve's Website* is the website of the NY Federal Reserve currently at <http://www.newyorkfed.org>, or any successor website of the NY Federal Reserve.

*SOFR Accrual Period.* The SOFR Accrual Period is the number of actual days from, and including, (a) the Initial Issue Date or the preceding Interest Payment Date, whichever is most recent, to (but not including) (b) the next succeeding Interest Payment Date regardless of the actual number of calendar days in any Month.

*SOFR Effective Date.* The SOFR Effective Date is each Business Day.

*SOFR Effective Period.* The SOFR Effective Period is the number of actual days from a SOFR Effective Date to the next SOFR Effective Date.

*SOFR Index.* The SOFR Index is the “Secured Overnight Financing Rate” reported on the NY Federal Reserve’s Website, or reported by any successor to the NY Federal Reserve as administrator of such Secured Overnight Financing Rate, as of 3:00 p.m. on each SOFR Publish Date representing the SOFR Index as of the SOFR Lookback Date, which will be used to calculate interest for the SOFR Effective Period beginning on the SOFR Effective Date. [For example, for purposes of determining the SOFR Index for a SOFR Effective Date of Thursday, February 17, 2022, the Calculation Agent uses SOFR published on the SOFR Publish Date of Tuesday, February 15, 2022, which is the SOFR Index for the SOFR Lookback Date of Monday, February 14, 2022. SOFR is published every Business Day at 8:00 a.m. and may be revised until 2:30 p.m., as described herein. If the SOFR Index is not available as of any Index Rate Reset Date, the interest rate for such Index Rate Reset Date will be determined using a comparable substitute or replacement index for such Index Rate Reset Date designated by CCCFA in writing (with notice to, and which is available to, the Calculation Agent) in compliance with the Indenture. Any substitute or replacement Index Rate is required to be consistent with any corresponding substitute or replacement index rate designated pursuant to the Interest Rate Swap.

*SOFR Interest Calculation Date.* The SOFR Interest Calculation Date is the last Business Day of each month.

*SOFR Lookback Date.* The SOFR Lookback Date is the third Business Day immediately preceding each SOFR Effective Date.

*SOFR Publish Date.* The SOFR Publish Date is the second Business Day immediately preceding each SOFR Effective Date.

*Additional Information Regarding SOFR.* The Secured Overnight Financing Rate (or SOFR) is published by the Federal Reserve Bank of New York (the “Federal Reserve”) and is intended to be a broad measure of the cost of borrowing cash overnight collateralized by Treasury securities. The Federal Reserve reports that the Secured Overnight Financing Rate includes all trades in the Broad General Collateral Rate (as defined on the Federal Reserve’s Website), plus bilateral Treasury repurchase agreement transactions cleared through the delivery-versus-payment service offered by the Fixed Income Clearing Corporation

(the “FICC”), a subsidiary of the Depository Trust and Clearing Corporation (“DTCC”). The Secured Overnight Financing Rate is filtered by the Federal Reserve to remove a portion of the foregoing transactions considered to be “specials” (as defined on the Federal Reserve’s Website).

The Federal Reserve reports that the Secured Overnight Financing Rate is calculated as a volume-weighted median of transaction-level tri-party repo data collected from The Bank of New York Mellon as well as General Collateral Finance repurchase agreement transaction data and data on bilateral Treasury repurchase transactions cleared through the FICC’s delivery-versus-payment service. The Federal Reserve notes that it obtains information from DTCC Solutions LLC, an affiliate of DTCC. The Federal Reserve notes on its publication page for the Secured Overnight Financing Rate that use of the Secured Overnight Financing Rate is subject to important limitations and disclaimers, including that the Federal Reserve may alter the methods of calculation, publication schedule, rate revision practices or availability of the Secured Overnight Financing Rate at any time without notice. Secured Overnight Financing Rate rates are subject to revision until 2:30 p.m. on any date on which the Secured Overnight Financing Rate is published. The description of the Secured Overnight Financing Rate herein is not and does not purport to be exhaustive.

For a more complete description of the Secured Overnight Financing Rate, see the Federal Reserve’s Website at <https://apps.newyorkfed.org/markets/autorates/sofr>. Such website is not incorporated by reference herein.

For a summary of certain risks relating to SOFR Index Rate Bonds, see “INVESTMENT CONSIDERATIONS - Certain Risks of SOFR Index Rate Bonds” above.

### ***Calculation Agent***

[ \_\_\_\_\_ ] will be appointed by CCCFA as Calculation Agent for any Series 2022[B]-2 Bonds and any Series 2022[B]-3 Bonds that are issued pursuant to the Indenture and a Calculation Agent Agreement between the parties.

### ***General***

After the Initial Interest Rate Period, the Outstanding Bonds may be remarketed or converted to another Term Rate Period, or a Daily Interest Rate Period, a Weekly Interest Rate Period, a Commercial Paper Interest Rate Period, another Index Rate Period, or a combination of Interest Rate Periods. ***This Official Statement describes the terms of the Bonds only during the Initial Interest Rate Period and must not be relied upon after the Bonds have been converted to another Interest Rate Period.***

Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment Date, shall be paid to the Person in whose name that Bond is registered, with respect to the Series 2022[B]-1 Bonds, at the close of business on the 15th day of the Month immediately preceding the Month in which such Interest Payment Date falls, or, with respect to the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, the Business Day immediately preceding such Interest Payment Date (the “Regular Record Date”).

Any interest on any Bond which is payable, but is not punctually paid or duly provided for on any Interest Payment Date (“Defaulted Interest”), shall forthwith cease to be payable to the Person who was the registered owner on the relevant Regular Record Date; and such Defaulted Interest shall be paid by CCCFA to the Persons in whose names the Bonds are registered at the close of business on a date (the “Special Record Date”) for the payment of such Defaulted Interest, which shall be fixed in the following

manner: CCCFA shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time CCCFA shall deposit with the Paying Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Paying Agent for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as provided in the Indenture. Thereupon the Bond Registrar will fix a Special Record Date for the payment of such Defaulted Interest which will be not more than 15 days nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of notice of the proposed payment. The Bond Registrar shall promptly notify CCCFA of such Special Record Date and, in the name and at the expense of CCCFA, will cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each Bondholder at its address as it appears upon the registry books, not less than 10 days prior to such Special Record Date.

#### *Increased Interest Rate Upon Ledger Event*

Pursuant to the Electricity Purchase, Sale and Service Agreement, if a Ledger Event occurs, J. Aron will be obligated to pay the Electricity Supplier, and pursuant to the Master Power Supply Agreement, the Electricity Supplier will be obligated to pay CCCFA, scheduled Additional Payments calculated to provide a sum sufficient (together with the interest component of the Scheduled Debt Service Deposits and any Interest Rate Swap Receipts) to enable CCCFA to pay the Increased Interest Rate on the Series 2022[B]-1 Bonds at a rate of 8.00% per annum, and to pay the Increased Interest Rate on the Index Rate Bonds at the applicable Index Rate plus \_\_\_%. The Indenture provides that, subject to CCCFA's receipt of such Additional Payments from the Electricity Supplier, interest on each Series of Bonds will be paid at each Increased Interest Rate after the occurrence of a Ledger Event.

See "THE MASTER POWER SUPPLY AGREEMENT — Ledger Event" below for a description of the provisions of the Master Power Supply Agreement relating to a Ledger Event and the amounts payable by the Electricity Supplier to CCCFA following a Ledger Event. See "THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT — Additional Amounts Payable Following a Ledger Event" below for a description of the provisions of the Electricity Purchase Sale and Service Agreement relating to the amounts payable by J. Aron to the Electricity Supplier following a Ledger Event.

The Bonds will bear interest at the Increased Interest Rate from and including the day on which a Ledger Event occurs to but not including the earlier of (a) the date on which a Termination Payment Event occurs under the Master Power Supply Agreement, (b) the Mandatory Purchase Date or any prior redemption date with respect to the Bonds, and (c) the Interest Payment Date with respect to such series of Bonds immediately succeeding the last date on which J. Aron paid the Additional Payments.

Interest on the Bonds at the Increased Interest Rate will be payable on each regular Interest Payment Date, any redemption date and the Mandatory Purchase Date. CCCFA will give prompt written notice to the Trustee of (i) the occurrence and date of a Ledger Event (which shall be the first day of the related Increased Interest Rate Period), and (ii) the occurrence and date of any Termination Payment Event (which shall be the last day of the related Increased Interest Rate Period). Interest on the Bonds at an Increased Interest Rate will be computed on the basis of a 360-day year consisting of twelve 30-day months and will be payable in the same manner as the interest borne by the Bonds on the Initial Issue Date.

For purposes of the Indenture:

(a) any Additional Payments received by CCCFA from the Electricity Supplier in respect of a Ledger Event shall not constitute an item of “Revenues” and shall be deposited directly into the Debt Service Account; and

(b) The Scheduled Debt Service Deposits required by the Indenture shall be computed on the basis of the interest rates borne by the Bonds on the Initial Issue Date and shall not be increased in the event that any series of Bonds bears interest at the Increased Interest Rate.

### *Tender*

*Mandatory Tender.* The Bonds maturing on [\_\_\_\_\_] 1, 20[\_\_\_]\* are required to be tendered for purchase on [\_\_\_\_\_] 1, 20[\_\_\_]\* (the “Mandatory Purchase Date”), which is the day following the last day of the Initial Interest Rate Period. The Purchase Price of the Bonds on the Mandatory Purchase Date is equal to 100% of the principal amount thereof and is payable in immediately available funds *first* from amounts on deposit in the Remarketing Proceeds Account established by the Indenture and *second* from amounts on deposit in the Issuer Purchase Account established by the Indenture. Accrued interest due on any Bonds to be purchased on the Mandatory Purchase Date, which is an Interest Payment Date, shall be paid from amounts on deposit in the Debt Service Account.

The Purchase Price of any Bond on the Mandatory Purchase Date shall be payable only upon surrender of such Bond to the Trustee at its designated corporate office, accompanied by an instrument of transfer thereof in form satisfactory to the Trustee, executed in blank by the Owner thereof or by the Owner’s duly-authorized attorney, with such signature guaranteed by a commercial bank, trust company or member firm of the New York Stock Exchange at or prior to 10:00 a.m., New York City time on the date specified for such delivery. Notice of a mandatory tender is to be given no less than 30 days prior to the applicable Mandatory Purchase Date. In the event that any Owner of a Bond so subject to mandatory tender for purchase shall not surrender such Bond to the Trustee for purchase on the Mandatory Purchase Date, then such Bond shall be deemed to be an Undelivered Bond, and that no interest shall accrue thereon on and after such mandatory purchase date and that the Owner thereof shall have no rights under the Indenture other than to receive payment of the Purchase Price thereof.

*Failed Remarketing.* Under the Indenture, “Failed Remarketing” means the failure (i) of the Trustee to receive the Purchase Price, or to have on deposit in the Bond Purchase Fund amounts sufficient and available to pay the Purchase Price, of any Bond required to be purchased on a Mandatory Purchase Date by 12:00 noon, New York City time, on the fifth Business Day preceding such Mandatory Purchase Date or (ii) to purchase or redeem such Bond in whole by such Mandatory Purchase Date (including from any funds on deposit in the Assignment Payment Fund and required to be used for such redemption). A Failed Remarketing is a Termination Payment Event, and will result in an Early Termination Payment Date, under the Master Power Supply Agreement, and the extraordinary redemption of the Bonds on the Mandatory Purchase Date. Such an extraordinary redemption of the Bonds has the same economic effect on Bondholders as a mandatory tender of the Bonds on the Mandatory Purchase Date.

*No Optional Tender.* The Bonds are *not* subject to optional tender by Bondholders during the Initial Interest Rate Period.

### *Redemption\**

*Optional Redemption of Series 2022[B]-1.* The Series 2022[B]-1 Bonds are subject to redemption at the option of CCCFA in whole or in part (in such amounts and by such maturities as may be specified by

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\* Preliminary, subject to change.

CCCFA and by lot within a maturity) on any date at a Redemption Price, calculated by a quotation agent selected by CCCFA, equal to the greater of:

(a) the sum of the present values of the remaining unpaid payments of principal and interest to be paid on the Series 2022[B]-1 Bonds to be redeemed from and including the date of redemption (not including any portion of the interest accrued and unpaid as of the redemption date) to the earlier of (a) the stated maturity date of such Series 2022[B]-1 Bonds, or (b) the Mandatory Purchase Date, discounted to the date of redemption on a semiannual basis at a discount rate equal to the Applicable Tax-Exempt Municipal Bond Rate (as defined in APPENDIX C) for such Series 2022[B]-1 Bonds minus 0.25% per annum; and

(b) the Amortized Value thereof (defined below);

in each case plus accrued and unpaid interest to the date of redemption.

The Series 2022[B]-1 Bonds maturing after the Mandatory Purchase Date are also subject to redemption at the option of CCCFA in whole or in part on and after the first Business Day of the third month preceding the Mandatory Purchase Date at a Redemption Price, calculated by a quotation agent selected by CCCFA, equal to the Amortized Value thereof (as of the first Business Day of the month of redemption), plus \$0. \_\_ per \$1,000 of the principal amount thereof and accrued and unpaid interest to the date of redemption. In lieu of redeeming Series 2022[B]-1 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of CCCFA, use such funds as may be available by CCCFA or as are otherwise available under the Indenture to purchase such Series 2022[B]-1 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022[B]-1 Bonds described above. Any Series 2022[B]-1 Bonds so purchased may be remarketed in a new Interest Rate Period or may be cancelled by the Trustee, in either case as set forth in the Written Direction of CCCFA.

*“Amortized Value”* means, with respect to any Series 2022[B]-1 Bond to be redeemed during the Initial Interest Rate Period, the principal amount of such Series 2022[B]-1 Bond multiplied by the price of such Series 2022[B]-1 Bond expressed as a percentage, calculated by a major market maker in municipal securities, as the quotation agent, selected by CCCFA, based on the industry standard method of calculating bond prices (as such industry standard prevailed on the date such Series 2022[B]-1 Bond began to bear interest at its current Term Rate), with a delivery date equal to the date of redemption of such Series 2022[B]-1 Bond, a maturity date equal to the earlier of (a) the stated maturity date of such Series 2022[B]-1 Bond, or (b) the Mandatory Purchase Date, and a yield equal to such Series 2022[B]-1 Bond’s original reoffering yield (as set forth on the inside cover page of this Official Statement) on the date such Series 2022[B]-1 Bond began to bear interest at its current Term Rate. The Amortized Value of the Series 2022[B]-1 as of certain dates during the Initial Interest Rate Period is shown on APPENDIX H.

*Optional Redemption of Index Rate Bonds.* The Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds are subject to optional redemption by CCCFA in whole or in part (in such amounts and by such maturities as may be specified by CCCFA and at random within a maturity), on any day on or after the first day of the third month preceding the Initial Mandatory Purchase Date for the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds, as applicable, at a Redemption Price equal to 100% of the principal amount thereof to be redeemed, plus accrued and unpaid interest to the date of redemption. In lieu of redeeming the Series 2022[B]-2 Bonds or Series 2022[B]-3 Bonds pursuant to this provision, the Trustee may, upon the Written Direction of CCCFA, use such funds as may be available by CCCFA or as are otherwise available under the Indenture to purchase such Series 2022[B]-2 Bonds or Series 2022[B]-3 Bonds on the applicable redemption date at a Purchase Price equal to the applicable Redemption Price of such Series 2022[B]-2

Bonds or Series 2022[B]-3 Bonds, as applicable. Any Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds so purchased may be remarketed in a new Interest Rate Period.

*Extraordinary Mandatory Redemption.* The Bonds are subject to mandatory redemption prior to maturity in whole, and not in part, (1) except in the case of a Failed Remarketing, on the first day of the Month following the Early Termination Payment Date and (2) in the case of a Failed Remarketing, on the Mandatory Purchase Date following such Failed Remarketing, at a Redemption Price equal to the Amortized Value thereof plus accrued and unpaid interest to the redemption date. See APPENDIX I for a schedule showing the Redemption Price (excluding accrued interest) of all of the Bonds upon an extraordinary mandatory redemption following an Early Termination Payment Date that occurs during the Initial Interest Rate Period.

CCCFA shall provide the Trustee with Written Notice of the Early Termination Payment Date (x) on the date on which a Failed Remarketing occurs, and (y) in all other cases, not more than five Business Days after such date is determined.

The Bonds shall be subject to redemption for remediation at the direction of CCCFA prior to maturity, in whole or in part, on any date, at the then-applicable optional Redemption Price for the Bonds to be redeemed as set forth in APPENDIX I hereto, plus accrued interest to the redemption date, to the extent provided in the Clean Energy Purchase Contract. The CCCFA shall provide the Trustee with Written Notice of the requirement for any such redemption not more than five (5) Business Days after determining that such redemption will be required.

*Notice of Redemption.* In the case of every redemption of Bonds, the Trustee is to give notice of such redemption, in the name of CCCFA, of the redemption of the Bonds, by first-class mail, postage prepaid, not less than 20 days (15 days in the case of an extraordinary mandatory redemption described above) (or such shorter time as may be permitted by the securities depository) and not more than 45 days (30 days in the case of an extraordinary mandatory redemption described above) prior to the redemption date.

Each notice of redemption must identify the Bonds to be redeemed and is to state: (i) the redemption date, (ii) the Redemption Price or the manner in which it will be calculated, (iii) that the Bonds called for redemption must be surrendered to collect the Redemption Price, (iv) the address or addresses of the Trustee at which the Bonds redeemed must be surrendered, and (v) that interest on the Bonds called for redemption ceases to accrue on the redemption date. Failure of the registered owner of any Bonds which are to be redeemed to receive any such notice, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any Bonds.

In the event that the Bonds may be subject to extraordinary redemption as a result of a Failed Remarketing that could occur if the Trustee has not received the Purchase Price of the Bonds by 12:00 noon New York City time on the fifth Business Day preceding a Mandatory Purchase Date, a notice of extraordinary redemption of the Bonds may be a conditional notice of redemption, delivered in each case not less than 15 days prior to such Mandatory Purchase Date, stating that: (a) such redemption shall be conditioned upon the Trustee's failure to receive, by 12:00 noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Purchase Price of the Bonds required to be purchased on such Mandatory Purchase Date, and (b) if the full amount of the Purchase Price has been received by the Trustee by 12:00 noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Bonds shall be purchased pursuant to a mandatory tender on such Mandatory Purchase Date rather than redeemed. If the full amount of the Purchase Price has been received by the Trustee by 12:00 noon New York City time on the fifth Business Day preceding such Mandatory Purchase Date, the Trustee shall withdraw such conditional notice of redemption prior to such Mandatory Purchase Date and

the Bonds will be purchased pursuant to a mandatory tender on such Mandatory Purchase Date rather than redeemed.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds will be deemed to have been paid under the Indenture, such notice must state that such redemption will be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the Redemption Price of and interest on the Bonds to be redeemed, and that if such moneys shall not have been so received said notice will be of no force and effect, and CCCFA will not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition, and such money is not so received, the redemption will not be made and the Trustee must within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made.

*Effect of Redemption.* Notice having been given in the manner provided in the Indenture, and, in the case of optional redemption of Bonds, sufficient moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on such Bonds being held by the Trustee, the Bonds or portions thereof so called for redemption will become due and payable on the redemption date so designated at the applicable Redemption Price, and, upon presentation and surrender thereof at the office specified in such notice, such Bonds, or portions thereof, will be paid at the Redemption Price. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof of any like series, maturity and tenor to be redeemed, together with interest to the redemption date, are held by the Paying Agent so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Bonds or portions thereof of so called for redemption will cease to accrue and become payable. If said moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption. Upon the payment of the Redemption Price of the Bonds or portions thereof being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

*Selection of Bonds to be Redeemed.* If less than all of the Bonds of like maturity, tenor and series are called for redemption, the particular Bonds or portions of Bonds of such series, maturity and tenor to be redeemed must be selected by lot in such manner as the Trustee determines, in its sole discretion, from Bonds of such series, maturity and tenor not previously called for redemption; provided, however, that the portion of any Bond of a denomination of more than a minimum Authorized Denomination to be redeemed shall be in the principal amount of such minimum Authorized Denomination or a multiple thereof, and that, in selecting portions of such Bonds for redemption, the Trustee must treat each such Bond as representing that number of Bonds of a minimum Authorized Denomination which is obtained by dividing by such minimum Authorized Denomination the principal amount of such Bond to be redeemed in part. Upon surrender of a Bond redeemed in part, CCCFA must execute and the Trustee must authenticate and deliver to the Holder thereof a new Bond or Bonds of the same series, maturity and tenor in Authorized Denominations equal in principal amount to the unredeemed portion of the Bond surrendered.

#### *Book-Entry System*

The Bonds will be initially issued in book-entry only form through the facilities of DTC. The Bonds will be transferable and exchangeable as set forth in the Indenture and, when issued, will be registered in the name of Cede & Co., as nominee of DTC. DTC will act as securities depository for the Bonds. So long as Cede & Co. is the registered owner of the Bonds, principal of and premium, if any, and interest on the Bonds are payable by wire transfer by the Trustee to Cede & Co., as nominee for DTC,

which, in turn, will remit such amounts to DTC participants for subsequent disbursement to the Beneficial Owners. See APPENDIX G — “BOOK-ENTRY SYSTEM.”

## REVENUES AND DEBT SERVICE REQUIREMENTS

The following table shows for each bond year during the Initial Interest Rate Period (a) the expected Revenues of the Clean Energy Project (net of receipts and payments under the CCCFA Commodity Swaps), (b) the Debt Service requirements on the Bonds (giving effect to the fixed interest rate payable by CCCFA under the Interest Rate Swap) and (c) the resulting surplus funds to CCCFA.

YEAR ENDING [ ], 1*	ESTIMATED REVENUES				DEBT SERVICE			
	ELECTRICITY SALES <sup>1</sup>	INTEREST EARNINGS <sup>2</sup>	OTHER AMOUNTS <sup>3</sup>	TOTAL	PRINCIPAL <sup>4</sup>	INTEREST	TOTAL	SURPLUS
2022								
2023								
2024								
2025								
2026								
2027								
2028								
2029								
2030								
2031								
2032								
TOTAL								

- 1 Electricity Sales includes payments received by CCCFA under the Clean Energy Purchase Contract and net receipts/payments under the CCCFA Commodity Swaps.
- 2 Interest earnings under the Investment Agreements at a rate of \_\_\_\_% per annum.
- 3 Other Amounts consists of capitalized interest, total reserve amounts, remaining Electricity value (i.e., amount of Termination Payment due upon a Failed Remarketing), and required balances in the Debt Service Account.
- 4 Principal due on [ ] 1, 20[ ]\* includes principal amount payable pursuant to mandatory tender on the Mandatory Purchase Date.

### DESIGNATION OF BONDS AS [GREEN BONDS – CLIMATE CERTIFIED]

[To come]

### THE MASTER POWER SUPPLY AGREEMENT

*Set forth below is a summary of certain provisions of the Master Power Supply Agreement relating to the purchase and sale of Electricity during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Master Power Supply Agreement and accordingly is qualified by reference to the full text thereof.*

#### *Purchase and Sale*

Under the Master Power Supply Agreement, CCCFA has agreed to make a lump sum advance payment to the Electricity Supplier for all of the cost of the Prepaid Electricity (which does not include Assigned PAYGO Electricity) to be delivered during the Delivery Period. The total quantity of expected Prepaid Electricity to be delivered by the Electricity Supplier during the Initial Interest Rate Period is approximately [ ]\* million MWh.

CCCFA will pay the Electricity Supplier the APC Contract Price then in effect under the applicable Assigned PPAs for any Assigned PAYGO Electricity delivered under the Master Power Supply Agreement. See “GSG, J. ARON AND THE ELECTRICITY SUPPLIER — *The Electricity Supplier — Master Electricity*

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\* Preliminary, subject to change.

*Supplier Custodial Agreement.*” Such payments made for Assigned PAYGO Electricity are not included in the Trust Estate or pledged to the repayment of the Bonds.

*Delivery of Electricity*

*Assigned Electricity.* Assigned Electricity delivered under the Master Power Supply Agreement shall be Scheduled for delivery to and receipt at the delivery point specified in the applicable Assignment Schedule (an “*Assigned Delivery Point*”). Scheduling and transmission of Assigned Electricity shall be in accordance with the applicable Assignment Schedule. At the start of the Delivery Period, the Project Participant will assign, pursuant to limited assignment agreements, [two (2)] power purchase agreements to J. Aron for delivery beginning [ ] 1, 202[ ]\*, as described under “– *Assignment of Power Purchase Agreements*” below.

All future Assigned Electricity will be delivered pursuant to the terms of such Assignment Agreement.

*Base Quantities.* If there is insufficient Assigned Prepay Value (defined below), the Electricity Supplier is required to deliver Base Quantities to a delivery point specified in the Master Power Supply Agreement, or to an alternate delivery point mutually agreed to by the Electricity Supplier, CCCFA and the Project Participant (the “*Base Delivery Point.*”) **Base Quantities are not expected to be delivered during the Initial Interest Rate Period.**

*Title.* Title to and risk of loss of the Energy delivered under the Master Power Supply Agreement shall pass from the Electricity Supplier to CCCFA at the applicable Delivery Point. The transfer of title and risk of loss for all Assigned Electricity shall be set forth in the applicable Assignment Agreement.

*Aggregate Quantity.* The aggregate quantity of Electricity to be delivered during the term of the Delivery Period varies based on the quantities of Electricity CCCFA has agreed to deliver to the Project Participant under the Clean Energy Purchase Contract. The approximate aggregate monthly quantities of Assigned Prepay Quantities to be delivered under the Master Power Supply Agreement during the Initial Interest Rate Period range from a high of approximately [ ]\* MWh in some months to a low of [ ]\* MWh in other months.

*Assignment of Power Purchase Agreements*

The Project Participant will assign, pursuant to limited assignment agreements, [two (2)] power purchase agreements to J. Aron for delivery beginning [ ] 1, 202[ ]\*. The Assigned PPAs pursuant to which the Initial Assigned Rights and Obligations are anticipated to be assigned to J. Aron are described as follows:

Name of Project	Location	Term of PPA	Type of Project	Commercial Operation Date	Capacity	Annual Assigned Prepaid Quantity* MWh ([ ] / [ ] / 202 [ ] - [ ] / [ ] / 202 [ ] )
Geysers	Sonoma and Lake Counties, CA	15 years	Geothermal	01/01/2022	50 MW	

\* Preliminary, subject to change.

White Hills                      White    20 years              Wind              12/15/2020              300 MW  
   Hills, AZ

*Adjustments to Base Quantities and Assigned Quantities.* The Master Power Supply Agreement and the Clean Energy Purchase Contract are designed to manage future assignments of PPAs and potential delivery of Base Quantities, if ever required, while ensuring there are sufficient scheduled cashflows to meet CCCFA's payment obligations. Upon any assignments terminating, expiring, or being entered into, the Master Power Supply Agreement and Clean Energy Purchase Contract include provisions to recalculate Assigned Prepay Quantities and Base Quantities. In all cases, the total aggregate prepaid value (consisting of the amount of monthly Assigned Prepaid Quantities multiplied by the APC Contract Price for Assigned Electricity, and the Base Quantities multiplied by the fixed swap price for such Base Quantities) remains the same.

As such, upon a replacement of the Assigned Rights and Obligations under an Assigned PPA, or J. Aron's procurement of Energy which can be purchased in compliance with applicable EPS standards ("*EPS Compliant Energy*"), the Base Quantities will be reduced as provided in the Clean Energy Purchase Contract. To the extent Base Quantities were previously being delivered, the Commodity Swaps will be revised in connection with the commencement or termination of any Assignment Period such that the notional quantities under such swaps will be consistent with any changes to Base Quantities. Base Quantities may also be revised (a "*Base Quantity Reduction*") to reflect any Replacement Assigned Rights and Obligations, with such calculation reflecting the same methodology as used to determine the Initial Assigned Rights and Obligation. The Base Quantity Reductions may also be revised in the case of any other commencement of a subsequent Assignment Period or a delivery period for any EPS Compliant Energy procured by J. Aron (a "*J. Aron EPS Energy Period*", and together with an Assignment Period, an "*EPS Energy Period*").

When determining the Assigned Prepay Quantities related to an Assigned PPA that has quantities of Electricity that are deliverable on an as-available basis (an "*Applicable Project*"), such Assigned Quantity may not exceed the amount which J. Aron determines with a high degree of certainty that such Applicable Project will be able to generate in each Month during the Assignment Period.

*Reconciling Assigned Delivered Value.* For any month, the value of the Assigned Electricity that is delivered during such month pursuant to such Assigned PPA is determined using the applicable APC Contract Price for such Assigned Electricity multiplied by the quantity of Electricity delivered. (the "*Assigned Delivered Value*"). For any Month and each Assignment Schedule, the Assigned Quantity for such Month multiplied by the applicable APC Contract Price is referred to as the "*Assigned Prepay Value.*" To the extent the Assigned Delivered Value is less than the Assigned Prepay Value, the Electricity Supplier must sell the Assigned Electricity not delivered in a private business use sale at the APC Contract Price and shall pay CCCFA the different between the Assigned Prepay Value and the Assigned Delivered Value.

*PPA Payment Custodial Agreement.* The Project Participant, J. Aron, the Electricity Supplier, the CCCFA and [\_\_\_\_\_], as custodian (in such capacity, the "*Custodian*") have entered into a custodial agreement (the "*PPA Payment Custodial Agreement*") to administer payments to be received by the sellers of Assigned Electricity pursuant to the Assigned PPAs (the "*PPA Sellers*"). The PPA Payment Custodial Agreement is not pledged as part of the Trust Estate.

#### *Failure to Deliver or Receive Electricity*

*Assigned Quantities.* Neither CCCFA nor the Electricity Supplier shall have any liability or other obligation to one another for any failure to Schedule, receive, or deliver Assigned Quantities, except as

described under the subheadings “— *Assignment of Power Purchase Agreements*” and “THE CLEAN ENERGY PURCHASE CONTRACT — *Pricing Provisions – CPA Monthly Payments*” herein.

*Base Quantities.* Because CCCFA will have prepaid for all Electricity (other than Assigned PAYGO Electricity) to be delivered under the Master Power Supply Agreement, the Electricity Supplier will be required to pay CCCFA for all Base Quantities that the Electricity Supplier fails to deliver or CCCFA fails to receive for any reason, including events of *force majeure*. The amount the Electricity Supplier is required to pay is equal to the quantity that was not delivered or received multiplied by a price that is determined in a manner depending upon the reason for such failure:

- If the Electricity Supplier fails to deliver Base Quantities for reasons other than *force majeure* or action or inaction by CCCFA and CCCFA, such quantity is referred to herein as a “*Shortfall Quantity*,” and the Electricity Supplier is required to pay the higher of (a) the replacement price paid by CCCFA, or (b) the Day-Ahead Market Price applicable to the Hour and the Delivery Point for which the Shortfall Quantity arose, plus in either case an administrative fee of \$0.50/MWh. In such event, CCCFA will cause the Project Participant to exercise Commercially Reasonable Efforts to mitigate damages paid by the Electricity Supplier under the Master Power Supply Agreement.
- If CCCFA fails to receive all or any portion of Base Quantities for reasons other than *force majeure*, for which CCCFA has previously issued a Remarketing Notice in accordance with the Master Power Supply Agreement, CCCFA shall be deemed to have issued a Deemed Remarketing Notice with respect to such portion.
- If either the Electricity Supplier fails to deliver all or any portion of Base Quantities or CCCFA fails to receive all or any portion of Base Quantities due to events of *force majeure*, the Electricity Supplier is required to pay the applicable Day-Ahead Market Price for such portion of Base Quantities.

The “Day-Ahead Market Price” is the day-ahead market price for the delivery point specified in the Master Power Supply Agreement. See “THE CLEAN ENERGY PURCHASE CONTRACT — Pricing Provisions.” **Base Quantities are not expected to be delivered during the Initial Interest Rate Period.**

#### *Electricity Remarketing*

*Assigned Electricity.* If CCCFA requests remarketing of any Assigned Quantities as a result of (a) decreased demand by Project Participant’s retail customers, (b) the quantity of Assigned Electricity delivered in any Month during an Assignment Period is less than the Assigned Prepay Quantity for any reason, (c) a change in law, or (d) an inability to assign EPS Compliant Energy and at such time Base Quantities are not deemed EPS Compliant Energy, the Electricity Supplier has the right to terminate the Assignment Period applicable to such Assigned Quantities effective as of the first Hour to which such remarketing applies. If the Electricity Supplier does not elect to terminate the Assignment Period, CCCFA and the Electricity Supplier shall negotiate in good faith to modify the Master Power Supply Agreement to reflect pricing, delivery and other terms related to such Assigned Quantities, and the Electricity Supplier shall have no obligation to remarket such Assigned Quantities unless and until Buyer and Seller have mutually agreed to such adjustments.

*Base Quantities.* If the Project Participant is in default under its Clean Energy Purchase Contract or is unable to receive all or any portion of the Base Quantities purchased by CCCFA during the Delivery Period under the Master Power Supply Agreement as a result of (a) decreased demand by Project Participant’s retail customers, (b) the quantity of Assigned Electricity delivered in any Month during an

Assignment Period is less than the Assigned Prepay Quantity for any reason, (c) a change in law, or (d) an inability to assign EPS Compliant Energy, and at such time Base Quantities are not deemed EPS Compliant Energy, and requests that such Base Quantities be remarketed, CCCFA agrees to request the Electricity Supplier to remarket to other purchasers all or a specified portion of the Base Quantities to be delivered under the Master Power Supply Agreement by delivering Monthly Remarketing Notices or Daily Remarketing Notices as provided in the Master Power Supply Agreement. Under current law, the Project Participant is unable to receive Base Quantities, and as such, Base Quantities which are delivered, if any, are expected to be remarketed.

*Delegation of Authority.* J. Aron has agreed to provide all services necessary for the Electricity Supplier to meet its Electricity Remarketing obligations under the Master Power Supply Agreement. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT — J. Aron as Agent.”

*Remarketing for Qualifying Use.* There are three types of potential remarketing sales when proper notice has been tendered: qualified sales to Municipal Utilities, non-private business use sales and private business use sales. The Electricity Supplier is required to use Commercially Reasonable Efforts to remarket Electricity first in qualified sales and next in non-private business use sales. If the Electricity Supplier is unable to remarket the Electricity designated in a remarketing notice in qualified sales or in non-private business use sales, it will purchase the Electricity.

The amounts payable by the Electricity Supplier for Electricity remarketed are the actual sale proceeds or the amounts based on the Day-Ahead Market Price applicable to such Electricity and Hour (if pursuant to a Monthly Remarketing Notice) or the Real-Time Market Price applicable to such Electricity and Hour (if pursuant to a Daily Remarketing Notice), less specified remarketing fees.

*Ledger Entries.* The Electricity Supplier must track in dollar and electric quantity ledgers information relating to the remarketing proceeds and the quantities of Electricity remarketed, including sales made to the Project Participant and other Municipal Utilities, to non-private business users and to private business users.

*Remediation.* The Electricity Supplier and CCCFA will seek to make additional qualified sales to reduce the ledger amounts associated with non-private and private business use sales. In addition, the Project Participant has covenanted under the Clean Energy Purchase Contract to exercise commercially reasonable efforts to reduce such ledger amounts by applying the proceeds thereon toward future Electricity Purchases made by the Project Participant that would qualify to remediate such entries, and for any Month the Project Participant remediates such ledger amounts, the Issuer shall pay the Project Participant on or before the last Business Day of such Month any portion of the Monthly Discount Percentage associated with such ledger amounts that is available under the Indenture. Any ledger entries remediated by the Electricity Supplier, CCCFA or the Project Participant would be removed from the relevant ledgers. In the event that J. Aron, as agent of the Electricity Supplier, fails to remediate any non-complying remarketing sales of Electricity within one year, the Electricity Supplier (acting at the direction of the director appointed by CCCFA) may, subject to certain requirements, supplement J. Aron with a third-party remarketing agent to remediate the non-complying sales. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT—J. Aron as Agent—*Replacement of J. Aron.*”

#### *Ledger Event*

As described previously, the Electricity Supplier will maintain ledgers that account for private business use and non-qualified use remarketing sales of Electricity. If the Electricity Supplier, CCCFA, and the Project Participant remediate such sales such that there is a remaining balance on any particular

ledger two years after any private business use or non-qualified remarketing sale of Electricity, such balance will count against:

(a) in the case of private business use sales, a limit equal to the lesser of (i) \$15 million (based on a quantity of Electricity determined by reference to the fixed price per Electricity under the Master Power Supply Agreement) or (ii) 10% of the original quantity of Electricity purchased under the Master Power Supply Agreement, and

(b) in the case of sales to non-qualified users, a limit of 10% of the original quantity of Electricity purchased under the Master Power Supply Agreement (or such higher amount as may be set forth in an Opinion of Bond Counsel),

in each case, subject to any higher amount as may be set forth in an Opinion of Bond Counsel. Both limits apply in the aggregate over the term of the Master Power Supply Agreement. In the event that either limit is exceeded, a “*Ledger Event*” will occur under the Master Power Supply Agreement, unless CCCFA receives an Opinion of Bond Counsel to the effect that such event will not adversely affect the exclusion from gross income for U.S. federal income tax purposes of interest on the Bonds. Any such Tax Opinion may take into account, among other things, any changes in tax requirements and any remedial actions taken with respect to the Bonds by CCCFA.

CCCFA has agreed in its Continuing Disclosure Undertaking for the Bonds to provide notices of (a) private business use sales and non-qualifying sales of Electricity that are not remediated within twelve months and (b) the occurrence of Ledger Events. See “CONTINUING DISCLOSURE UNDERTAKING” below.

The occurrence of a Ledger Event could cause interest on the Bonds to become subject to federal income taxation, possibly retroactive to the Initial Issue Date of the Bonds. A Ledger Event provides the Electricity Supplier with the option, but not an obligation, to designate an Electricity Delivery Termination Date under the Master Power Supply Agreement. [If the Electricity Supplier designates an Electricity Delivery Termination Date due to a Ledger Event, the Electricity Supplier will also have the option, but not an obligation, to provide the Funding Recipient with the option, but not an obligation, to pay the Final Payment Amount under the Funding Agreement. A Ledger Event does not, by itself, result in an Early Termination Payment Date under the Master Power Supply Agreement.] See “INVESTMENT CONSIDERATIONS — Loss of Tax Exemption.”

Following the occurrence of a Ledger Event, the Electricity Supplier agrees to pay to CCCFA any amounts that become payable by J. Aron to the Electricity Supplier pursuant to the Electricity Purchase, Sale and Service Agreement as a result of such Ledger Event. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT — Additional Amounts Payable Following a Ledger Event” and “THE BONDS — Increased Interest Rate Upon Ledger Event.”

### *Payment Provisions*

The prepayment from CCCFA to the Electricity Supplier will be due prior to the inception of the term of the Master Power Supply Agreement. To the extent amounts become payable to CCCFA thereunder (for example, as a result of remarketing or failure to deliver by the Electricity Supplier), such amounts are due on the [23rd] day of the month or the preceding business day following the month in which such amount accrues. Amounts payable by CCCFA are due on the [24]th day of the month or the following business day following the month in which such amounts accrue.

### *Force Majeure*

Each of CCCFA and the Electricity Supplier are excused from their respective obligations to receive and deliver Electricity under the Master Power Supply Agreement to the extent prevented by *force majeure*, defined generally as an event or circumstance not anticipated and not within the reasonable control of, or the result of negligence of, the party claiming *force majeure*. This includes such events as riot, insurrection, war, labor dispute, natural disaster, vandalism, terrorism, and sabotage. The declaration of *force majeure* by an APC Party under a PPA or by the Project Participant under the Clean Energy Purchase Contract constitutes *force majeure* under the Master Power Supply Agreement.

### *Assignment*

Neither party may assign its rights under the Master Power Supply Agreement without the other party's consent except:

(a) pursuant to the Indenture, CCCFA may transfer, sell, pledge, encumber or assign the Master Power Supply Agreement to the Trustee in connection with a financing arrangement; *provided* that CCCFA may not assign its rights under the Master Power Supply Agreement unless, contemporaneously with the effectiveness of such assignment, CCCFA also assigns the CCCFA Commodity Swaps and the CCCFA Custodial Agreements to the same assignees; and

(b) the Electricity Supplier may assign the Master Power Supply Agreement to an affiliate of the Electricity Supplier, which assignment shall constitute a novation; *provided* that the assignee agrees to be bound by the terms and conditions of the Master Power Supply Agreement and (i) the Electricity Supplier delivers a Rating Confirmation with respect to such assignment, (ii) contemporaneously with the effectiveness of such assignment, the Electricity Supplier also assigns the Electricity Supplier Commodity Swaps, the Electricity Supplier Custodial Agreements and the Master Electricity Supplier Custodial Agreement to the same assignee and either (a) the Electricity Supplier assigns the Funding Agreement and the Electricity Purchase, Sale and Service Agreement to the same assignee or (b) the assignee provides to CCCFA a guarantee of its obligations by GSG and GSG continues to guarantee the payment obligations of J. Aron under the Electricity Purchase, Sale and Service Agreement, and (iii) the assignee is a special purpose entity approved by CCCFA or its obligations under the Master Power Supply Agreement are guaranteed by GSG (or its successors to or permitted assignees of the Funding Agreement) to the satisfaction of CCCFA.

### *Early Termination*

An Electricity Delivery Termination Date will occur automatically under the Master Power Supply Agreement upon the occurrence of a Termination Payment Event (which includes a Failed Remarketing with respect to the Bonds) or an Automatic Electricity Delivery Termination Event (as such terms are described below). Upon the occurrence of an Optional Electricity Delivery Termination Event (as described below), an Electricity Delivery Termination Date may be designated by the Electricity Supplier, as described below. If an Electricity Delivery Termination Date occurs, the Delivery Period under the Master Power Supply Agreement will end and the Electricity Supplier will be required to make the payment or payments described under "Remedies and Termination" below.

*Termination Payment Event.* A Termination Payment Event will occur under the Master Power Supply Agreement if:

- the Electricity Supplier fails to make a payment because of a failure by [the Funding Recipient] to pay when due any amounts owed to the Electricity Supplier pursuant to the Funding Agreement and such failure continues for 30 days after receipt by the Electricity Supplier of notice thereof;
- as of one week prior to the beginning of the first Month following a Reset Period, either (a) CCCFA has not entered into a bond purchase agreement, firm remarketing agreement or similar agreement with respect to the remarketing or refunding of the Bonds or (b) the Funding Recipient (or its successor) and the Electricity Supplier are unable to replace, refinance or re-price the Funding Agreement for a subsequent Reset Period;
- J. Aron exercises its option to designate a EPSSA Early Termination Date under the Electricity Purchase, Sale and Service Agreement due to the Project Participant making a Remarketing Election for any Reset Period;
- a Failed Remarketing occurs;
- [Electricity Supplier acceleration of Funding Agreement upon ledger event]; or
- both (a) an Electricity Delivery Termination Date occurs under the Master Power Supply Agreement and (b) [the Funding Recipient] exercises its option to prepay the Final Payment Amount under the Funding Agreement. See “Remedies and Termination Payment — *Electricity Delivery Termination Date*” and “THE FUNDING AGREEMENT — Prepayment Option” below.

*Optional Electricity Delivery Termination Events.* The Electricity Supplier will have the right to designate an Electricity Delivery Termination Date under the Master Power Supply Agreement under the following circumstances:

- except in the case where an Automatic Electricity Delivery Termination Event has occurred, both (a) a CCCFA Commodity Swap is terminated by a Commodity Swap Counterparty or termination occurs automatically as a result of an event of default where CCCFA is the defaulting party or a termination event where CCCFA is the sole affected party and (b) either a CCCFA Commodity Swap or an Electricity Supplier Commodity Swap is not replaced within the Swap Replacement Period; or
- a Ledger Event occurs.

[CCCFA will have the right to designate an Electricity Delivery Termination Date under the Master Power Supply Agreement if it designates an early termination date under the Interest Rate Swap based upon an event of default thereunder where J. Aron is the defaulting party.]

*Automatic Electricity Delivery Termination Events.* An Electricity Delivery Termination Date will occur automatically under the Master Power Supply Agreement under the following circumstances:

- a CCCFA Commodity Swap is terminated by a Commodity Swap Counterparty as a result of an event of default due to CCCFA’s insolvency or bankruptcy;
- both (a) an Electricity Supplier Commodity Swap is terminated by a Commodity Swap Counterparty based on an event of default where the Electricity Supplier is the defaulting party or a termination event where the Electricity Supplier is the sole affected party, or

otherwise occurs automatically and, except for certain events of default and termination events for which the Swap Replacement Period does not apply, (b) either an Electricity Supplier Commodity Swap or the CCCFA Commodity Swap is not replaced within the Swap Replacement Period;

- following receipt of an offer by the Trustee to sell Swap Deficiency Call Receivables under the Receivables Purchase Provisions, the Electricity Supplier does not exercise (or is deemed not to have exercised) its related option to purchase the identified Swap Deficiency Call Receivables within the timeline set forth in the Receivables Purchase Provisions;
- Designation by J. Aron of an early termination date under the Interest Rate Swap;
- both (a) a EPSSA Early Termination Date occurs under the Electricity Purchase, Sale and Service Agreement, and (b) the Electricity Supplier is unable to enter into a replacement Electricity Purchase, Sale and Service Agreement with substantially the same terms or terms approved by the CCCFA by the date that is 120 days following such early termination date. The Electricity Supplier may enter into a replacement Electricity Purchase, Sale and Service Agreement only if (a) the EPSSA Guaranty applies to the obligations of the replacement seller thereunder or (b) the Electricity Supplier delivers a Rating Confirmation with respect to its entry into such replacement Electricity Purchase, Sale and Service Agreement; or
- bankruptcy or insolvency of CCCFA.

#### *Replacement of Commodity Swaps*

CCCFA and the Electricity Supplier agree in the Master Power Supply Agreement that if any Commodity Swap terminates, is being terminated or is expected to be terminated, in each case for any reason other than the insolvency of CCCFA or the Electricity Supplier or the failure of the Electricity Supplier to make payments due under the Electricity Supplier Commodity Swap, then:

(a) if a CCCFA Commodity Swap and an Electricity Supplier Commodity Swap are in effect and otherwise not subject to termination, (i) CCCFA and the Electricity Supplier shall exercise any rights they may have to increase their notional quantities under such Commodity Swaps in order to replace the Commodity Swap affected by the events described above, and (ii) subsequent to such a replacement, CCCFA and the Electricity Supplier shall cooperate in good faith to locate replacement agreements with a second Commodity Swap Counterparty and, upon locating a second Commodity Swap Counterparty, reduce their notional quantities under the remaining Commodity Swaps to their original levels and enter into replacement Commodity Swaps with the replacement Commodity Swap Counterparty for the remaining notional quantities; or

(b) if CCCFA and the Electricity Supplier cannot increase their notional quantities as described in (a) above, they will cooperate in good faith to locate replacement agreements with an alternate Swap Counterparty to replace the Commodity Swaps during the Swap Replacement Period.

The Swap Replacement Period begins when any Commodity Swap terminates and ends 120 days after termination of such Commodity Swap during which time CCCFA and the Electricity Supplier will make payments to each other under the Custodial Agreements, unless the Commodity Swaps are dormant due to Base Quantities being zero under the Master Power Supply Agreement. If the Commodity Swaps are dormant, the Swap Replacement Period continues until 120 days after the Commodity Swaps cease to

be dormant during which time CCCFA and the Electricity Supplier will make payments to each other under the Custodial Agreements.

*Remedies and Termination Payment*

*Electricity Delivery Termination Date.* An Electricity Delivery Termination Date will occur automatically upon the occurrence of a Termination Payment Event or an Automatic Electricity Delivery Termination Event; provided that an Electricity Delivery Termination Date will occur as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence of an Automatic Electricity Delivery Termination Event relating to the dissolution or bankruptcy of CCCFA. If an Optional Electricity Delivery Termination Event has occurred and is continuing, then the Electricity Supplier, as described above, may designate an Electricity Delivery Termination Date.

*End of Delivery Period.* As of the Electricity Delivery Termination Date:

- (a) the Delivery Period will end;
- (b) the obligation of the Electricity Supplier to make any further deliveries of Electricity to CCCFA will terminate and be replaced with a continuing obligation of the Electricity Supplier to pay scheduled monthly amounts to CCCFA until the earlier of (i) the month in which a Termination Payment Event occurs and (ii) the last due date for such scheduled payments; and
- (c) the obligation of CCCFA to receive deliveries of Electricity from the Electricity Supplier will terminate.

The Master Power Supply Agreement will continue in effect after the Electricity Delivery Termination Date occurs. The occurrence of an Electricity Delivery Termination Date will not prevent the contemporaneous or subsequent occurrence of a Termination Payment Event. Upon the occurrence of any Automatic Electricity Delivery Termination Event, an Electricity Delivery Termination Date shall be deemed to be designated as of the end of the month in which such Automatic Electricity Delivery Termination Event occurs.

*Termination Payment; Early Termination Payment Date.* Following a Termination Payment Event, the Electricity Supplier is required to pay the Termination Payment to the Trustee on the Early Termination Payment Date. The “Early Termination Payment Date” is the last Business Day of the Month that commences after a Termination Payment Event occurs. In the case of a Termination Payment Event that results from a Failed Remarketing, the Early Termination Payment Date will be the last Business Day of the current Interest Rate Period. The obligation of the Electricity Supplier to pay the Termination Payment on the Early Termination Payment Date and, if applicable, the Additional Termination Payment, is unconditional, and the Electricity Supplier waives all rights to set-off, counterclaim, recoupment and any other defenses that might otherwise be available with regard to its obligation to pay the Termination Payment and, if applicable, the Additional Termination Payment, on the Early Termination Payment Date.

The amount of the Termination Payment is set forth on a schedule to the Master Power Supply Agreement. The Termination Payment schedule approximately matches the Final Payment Amount attached to the Funding Agreement. The Termination Payment, together with the amounts required to be on deposit in certain Funds and Accounts held by the Trustee, has been calculated to provide a sum at least sufficient to pay the Redemption Price of the Bonds, assuming that the Electricity Supplier, the Project Participant (or if the Project Participant were to fail to pay, the performance of the Project Participant Credit Enhancement) and the Investment Agreement Providers pay and perform their respective contract

obligations when due. See APPENDIX I for a schedule of Termination Payments under the Master Power Supply Agreement.

*Additional Termination Payment.* In addition to the scheduled Termination Payment, if an Electricity Delivery Termination Date occurs as a result of certain events, the Electricity Supplier will be required to pay CCCFA an amount equal to the net present value of the quantity of Electricity that would have been delivered over the remaining term of the then-current Reset Period absent such early termination, multiplied by a fixed price per MWh (the “*Additional Termination Payment*”). The Additional Termination Payment is not part of the Trust Estate and is not pledged to secure the payment of the Bonds.

#### *Receivables Purchase Provisions*

*General.* Under certain circumstances, the Electricity Supplier has agreed to purchase from the Trustee the rights to payment of net amounts owed by the Project Participant under the Clean Energy Purchase Contract (“*Put Receivables*”). The Trustee can put these Put Receivables to the Electricity Supplier under the circumstances described below under “Put Option.” In addition, under certain circumstances described below under “Swap Deficiency Call Option” and “Elective Call Option,” the Electricity Supplier has the right to purchase from the Trustee CCCFA’s rights to payment of net amounts owed by the Project Participant under its Clean Energy Purchase Contract (“*Call Receivables*” and, collectively with Put Receivables, “*Receivables*”).

*Put Option.* If an Early Termination Payment Date is established under the Electricity Purchase Agreement, or upon the final scheduled maturity of the Bonds, the Trustee may put to the Electricity Supplier, and the Electricity Supplier then has an obligation to purchase, Put Receivables with a face value up to an amount (the “*Put Receivables Amount*”) equal to the sum of the Minimum Amount (less any amounts on deposit in the Commodity Reserve Account) plus the Debt Service Reserve Requirement (less any amounts on deposit in the Debt Service Reserve Account).

The maximum amount payable by the Electricity Supplier for such Put Receivables is limited to \$ \_\_\_\_\_ in the aggregate, which equals the sum of the Debt Service Reserve Requirement and the Minimum Amount required to be on deposit in the Commodity Reserve Account, and such amount will be reduced by any amounts on deposit in the Commodity Reserve Account or the Debt Service Reserve Account, respectively. The Electricity Supplier’s obligation to purchase such Put Receivables is subject to the condition that the representations and warranties made by CCCFA regarding its title to and the validity of the Put Receivables be true and correct on each day that the Electricity Supplier is required to purchase Put Receivables.

Under the Electricity Purchase, Sale and Service Agreement, J. Aron has agreed to purchase any Put Receivables purchased by the Electricity Supplier under the Receivables Purchase Provisions. See “THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT.”

*Swap Deficiency Call Option.* If the Project Participant defaults on its obligation to make any payment under its Clean Energy Purchase Contract with CCCFA and such payment default results in a Swap Payment Deficiency, then on such Business Day, the Trustee shall deliver a written offer (a “*Swap Deficiency Call Receivables Offer*”) to sell to the Electricity Supplier sufficient Swap Deficiency Call Receivables (such amount, less any undisputed amounts owed by CCCFA to the Project Participant, the “*Swap Deficiency Call Receivables Amount*”) to fund any Swap Payment Deficiency (defined in APPENDIX C) resulting from such default. No later than the Business Day following the Electricity Supplier’s receipt of a Swap Deficiency Call Receivables Offer, the Electricity Supplier may elect, in its discretion, to purchase the Swap Deficiency Call Receivables referenced in the Swap Deficiency Call Receivables Offer by delivering a written notice (a “*Swap Deficiency Call Option Notice*”) to the Trustee of the Electricity

Supplier's intent to purchase such Swap Deficiency Call Receivables. If the Electricity Supplier does not deliver a Swap Deficiency Call Option Notice to CCCFA and the Trustee on or before the Business Day following the Electricity Supplier's receipt of a Swap Deficiency Call Receivables Offer, the Electricity Supplier will be deemed to have elected not to purchase the referenced Swap Deficiency Call Receivables, which constitutes an Automatic Electricity Delivery Termination Event under the Master Power Supply Agreement.

The Trustee's obligation to offer to sell such Swap Deficiency Call Receivables is subject to the condition that all of the representations and warranties made by the Electricity Supplier at the time of execution and delivery of the Receivables Purchase Provisions be true and correct on each day that the Trustee is required to offer to sell Swap Deficiency Call Receivables.

Under the Electricity Purchase, Sale and Service Agreement, J. Aron has agreed to purchase any Swap Deficiency Call Receivable purchased by the Electricity Supplier under the Receivables Purchase Provisions, provided that J. Aron's obligation to purchase Swap Deficiency Call Receivables is subject to it having provided its prior written consent to the purchase of such Swap Deficiency Call Receivables by the Electricity Supplier. See "THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT."

*Elective Call Option.* If the Project Participant defaults on its obligation to make any payment under its Clean Energy Purchase Contract with CCCFA and such payment default does not result in a Swap Payment Deficiency, the Trustee shall deliver a written offer (an "*Elective Call Receivables Offer*") to sell to the Electricity Supplier sufficient Elective Call Receivables (such amount, less any undisputed amounts owed by CCCFA to the Project Participant, the "*Elective Call Receivables Amount*") to fund any Swap Payment Deficiency (defined in APPENDIX C) resulting from such default. No later than the Business Day following the Electricity Supplier's receipt of an Elective Call Receivables Offer, the Electricity Supplier may elect, in its discretion, to purchase the Elective Call Receivables referenced in the Elective Call Receivables Offer by delivering a written notice (a "*Elective Call Option Notice*") to the Trustee of the Electricity Supplier's intent to purchase such Elective Call Receivables. If the Electricity Supplier does not deliver an Elective Call Option Notice to CCCFA and the Trustee on or before the Business Day following the Electricity Supplier's receipt of an Elective Call Receivables Offer, the Electricity Supplier will be deemed to have elected not to purchase the referenced Elective Call Receivables, which does not constitute an Automatic Electricity Delivery Termination Event under the Master Power Supply Agreement.

The Trustee's obligation to offer to sell such Elective Call Receivables is subject to the condition that all of the representations and warranties made by the Electricity Supplier at the time of execution and delivery of the Receivables Purchase Provisions be true and correct on each day that the Trustee is required to offer to sell Elective Call Receivables.

Under the Electricity Sale and Service Agreement, J. Aron has agreed to purchase any Elective Call Receivable purchased by the Electricity Supplier under the Receivables Purchase Provisions, provided that J. Aron's obligation to purchase Elective Call Receivables is subject to it having provided its prior written consent to the purchase of such Elective Call Receivables by the Electricity Supplier. See "THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT."

## **THE RE-PRICING AGREEMENT**

*Set forth below is a summary of certain provisions of the Re-Pricing Agreement. This summary does not purport to be a complete description of the terms and conditions of the Re-Pricing Agreement and accordingly is qualified by reference to the full text thereof.*

*General*

On the Initial Issue Date of the Bonds, CCCFA and the Electricity Supplier will enter into a Re-Pricing Agreement (the “*Re-Pricing Agreement*”), which provides for (a) the determination of Electricity Delivery periods subsequent to the initial Delivery Period that corresponds to the Initial Interest Rate Period on the Bonds (“*Reset Periods*”) and (b) the calculation of the amount of the discount (as a percentage) that is available (the “*Available Discount Percentage*”) for sales of Electricity to the Project Participant during each Reset Period.

The initial delivery period under the Master Power Supply Agreement begins on the first day of [ ] 20[ ]\* and ends on the last day of [ ] 20[ ]\* and the first Reset Period is expected to begin on the first day of \_\_\_\_\_ 20\_\_.

*Remarketing Election*

In the event that the Available Discount Percentage for any Reset Period is less than the minimum discount percentage specified in the Clean Energy Purchase Contract, the Project Participant may elect not to take Electricity during the Reset Period and to have such Electricity remarketed for the duration of the Reset Period (a “*Remarketing Election*”) by giving notice of such election to CCCFA, the Electricity Supplier and the Trustee. Any Base Quantities that are covered by a Remarketing Election will be remarketed in accordance with the provisions of the Indenture and the Master Power Supply Agreement. In the event that the Project Participant makes a Remarketing Election with respect to any Reset Period, J. Aron will have the option to terminate the Electricity Purchase, Sale and Service Agreement. If J. Aron exercises this option, a Termination Payment Event and an Early Payment Termination Date will occur under the Master Power Supply Agreement. See “THE MASTER POWER SUPPLY AGREEMENT — Remarketing” and “— Early Termination.”

*Replacement of Funding Agreement*

The Re-Pricing Agreement includes provisions that enable the Electricity Supplier to obtain proposals from [the Funding Recipient] and other qualified funding recipients for funding agreements to replace the Funding Agreement upon its Maturity Date (which coincides with the end of the Initial Interest Rate Period). CCCFA agrees to cooperate in good faith with the Electricity Supplier and to take all steps reasonably within its control to cause the Bonds to be remarketed or refunded for the Interest Rate Period that corresponds to each Reset Period.

**THE ELECTRICITY PURCHASE, SALE AND SERVICE AGREEMENT**

*Set forth below is a summary of certain provisions of the Electricity Purchase, Sale and Service Agreement during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Electricity Purchase, Sale and Service Agreement and accordingly is qualified by reference to the full text thereof.*

*General*

Under the Electricity Purchase, Sale and Service Agreement, J. Aron has agreed to sell and deliver during the Delivery Period the Electricity in exchange for payment from the Electricity Supplier. For Assigned Prepay Quantities, the Electricity Supplier will pay J. Aron an amount equal to the APC Contract Price, plus a fee calculated on the Assigned Electricity Value (the “*J. Aron Electricity Fee*”), regardless of

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\* Preliminary, subject to change.

whether or not the Electricity is delivered pursuant to the terms and conditions of the Electricity Purchase, Sale and Service Agreement. For Base Quantities, the Electricity Supplier will pay J. Aron an amount equal to the Day-Ahead Market Price, plus a fee calculated on the Base Quantities multiplied by the fixed swap price. In addition, the Electricity Supplier will pay J. Aron an upfront structuring fee.

With respect to Assigned PAYGO Electricity, payment shall equal the quantity of such Assigned PAYGO Electricity multiplied by the applicable contract price(s) then in effect with respect to Electricity under the applicable Assigned PPAs.

The quantities of Electricity, delivery point provisions and delivery period under the Electricity Purchase, Sale and Service Agreement match the corresponding provisions of the Master Power Supply Agreement and, in turn, the corresponding provisions of the Clean Energy Purchase Contract.

#### *J. Aron as Agent*

*General.* Under the Electricity Purchase, Sale and Service Agreement, the Electricity Supplier appoints and directs J. Aron as its agent and J. Aron agrees to issue notices and other communications, billing statements and to take any other actions that the Electricity Supplier is required or permitted to take under (a) the Master Power Supply Agreement, (b) the Electricity Supplier Commodity Swaps, (c) the Re-Pricing Agreement, and (d) the Electricity Purchase, Sale and Service Agreement (collectively, the “*Energy Documents*”); provided that J. Aron’s agency role with respect to the Electricity Purchase, Sale and Service Agreement shall be limited to ordinary course actions required in connection with the Clean Energy Project and J. Aron shall have no right to waive, modify or amend the terms of the Electricity Purchase, Sale and Service Agreement on the Electricity Supplier’s behalf or to act on the Electricity Supplier’s behalf with respect to any dispute thereunder. In exercising this agency power, J. Aron shall have the authority to take any such actions as it deems necessary under the Energy Documents.

*Standard of Care.* In the conduct and performance of its agency role, J. Aron shall conduct itself consistent with and observe the same standard of care as it has in similar transactions in which J. Aron has acted as the seller under prepaid commodities agreements, and the Electricity Supplier acknowledges and agrees that J. Aron shall have no obligation to observe a standard of care greater than it has in such similar transactions or to take any actions or measures beyond those it typically takes in connection with such transactions. J. Aron shall not be liable for any action taken or omitted by it in acting as agent on behalf of the Electricity Supplier, except as expressly set forth in the Electricity Purchase, Sale and Service Agreement.

*Electricity Remarketing.* Under the Electricity Purchase, Sale and Service Agreement, the Electricity Supplier delegates, and J. Aron assumes, all of the Electricity Supplier’s Electricity Remarketing obligations under the remarketing provisions of the Master Power Supply Agreement, and J. Aron agrees to comply with such provisions. Pursuant to this delegation, all Electricity Remarketing notices, directions and other actions will be given to or by, and will be performed by, J. Aron, except as described below.

*Third Party.* In the event that there are entries for private business use sales or non-qualifying sales on any ledger set that have not been remediated within 12 months, the Electricity Supplier (acting at the direction of the director appointed by CCCFA) may hire a third party remarketing agent to remediate the outstanding ledger entries; *provided that* any such third party remarketing agent (or its guarantor) must: (a) have (i) an outstanding long-term senior, unsecured, unenhanced debt rating equivalent to or higher than the ratings assigned to the Bonds, (ii) capital stock, surplus and undivided earnings aggregating at least \$100,000,000, and (iii) satisfy the Member’s internal requirements relating to “know your customer” rules and similar rules and regulations, unless such requirements are waived by the Member; and (b) agree to (i) remediate such ledger entries consistent with the terms of the Master Power Supply Agreement, and

(ii) exercise commercially reasonable efforts to enter into remarketing sales to the extent that CCCFA, the Electricity Supplier or J. Aron locate opportunities for remarketing sales.

*Receivables Purchase.* J. Aron agrees in the Electricity Sale and Service Agreement to purchase any Receivables purchased by the Electricity Supplier under the Receivables Purchase Provisions; provided that J. Aron's obligation to purchase Swap Deficiency Call Receivables and Elective Call Receivables is subject to it having provided its prior written consent to the purchase thereof by the Electricity Supplier. J. Aron agrees to accept the transfer of Receivables as a credit against amounts owed by the Electricity Supplier under the Electricity Sale and Service Agreement and, to the extent that the amount of such Receivables exceeds the amount so owed by the Electricity Supplier in any Month, J. Aron will pay the difference to the Electricity Supplier. J. Aron agrees to pay the purchase price for such Receivables not later than the applicable purchase date specified in the Receivables Purchase Provisions by wire transfer of immediately available funds.

#### *Failure to Deliver or Receive Base Quantities*

J. Aron will be required to pay the Electricity Supplier for all Base Quantities that J. Aron fails to deliver or the Electricity Supplier fails to receive for any reason, including events of *force majeure*. The amount J. Aron is required to pay the Electricity Supplier is equal to the amount the Electricity Supplier is required to pay CCCFA for Base Quantities not delivered or received under the Master Power Supply Agreement, if such failure to deliver or receive Base Quantities is due to *force majeure*. If a failure of J. Aron to deliver Base Quantities is not due to *force majeure*, J. Aron shall pay the higher of the replacement price or the day-ahead market price applicable for such Shortfall Quantity. If there is a failure of the Electricity Supplier to take Base Quantities not due to *force majeure*, J. Aron shall pay an amount based on the price of remarketed Base Quantities, plus certain fees.

#### *Payment Provisions*

Amounts due from J. Aron to the Electricity Supplier under the Electricity Purchase, Sale and Service Agreement (for example, as a result of remarketing or failure to deliver by J. Aron) will be due on or before the 23rd day of the month following the month in which such amount accrues; *provided that* the purchase price of any Receivables purchased by J. Aron shall be paid on the applicable due date under the Receivables Purchase Provisions. Amounts due from the Electricity Supplier to J. Aron will be due on or before the 26th day of the month following the month in which such amount accrued. J. Aron is not entitled to net amounts due and owing by it thereunder, but the Electricity Supplier is entitled to net any amounts due and owing by J. Aron against its monthly payments due to J. Aron.

#### *Force Majeure*

Each of J. Aron and the Electricity Supplier are excused from their respective obligations to receive and deliver Electricity under the Electricity Purchase, Sale and Service Agreement to the extent prevented by *force majeure*, defined generally as an event or circumstance not anticipated and not within the reasonable control of, or the result of negligence of, the party claiming *force majeure*. This includes such events as riot, insurrection, war, labor dispute, natural disaster, vandalism, terrorism, and sabotage. The declaration of *force majeure* by an APC Party under a PPA, by the Project Participant under the Clean Energy Purchase Contract, or by CCCFA under the Master Power Supply Agreement, constitutes *force majeure* under the Electricity Purchase, Sale and Service Agreement.

### *Additional Amounts Payable Following a Ledger Event*

If a Ledger Event occurs under the Master Power Supply Agreement and an Early Termination Payment Date has not been designated thereunder, J. Aron agrees to pay to the Electricity Supplier scheduled Additional Payments calculated to provide a sum sufficient (together with the interest component of the Scheduled Debt Service Deposits and any Interest Rate Swap Receipts) to enable CCCFA to pay interest on the Bonds at the Increased Interest Rate. Such payments are due to the Electricity Supplier on (a) the Business Day preceding each Interest Payment Date and the Mandatory Purchase Date, and (b) any Early Termination Payment Date under the Master Power Supply Agreement. See “THE MASTER POWER SUPPLY AGREEMENT — Ledger Event” and “THE BONDS — Increased Interest Rate Upon Ledger Event.”

### *Assignment*

Neither party may assign its rights or obligations under the Electricity Purchase, Sale and Service Agreement without the other party’s consent, except that J. Aron may assign the Electricity Purchase, Sale and Service Agreement to an affiliate of J. Aron, which assignment will constitute a novation; *provided* that the assignee assumes the obligations of J. Aron under the Electricity Purchase, Sale and Service Agreement and either (a) the EPSSA Guaranty continues to apply to the obligations of such assignee under the Electricity Purchase, Sale and Service Agreement or (b) assignee provides to the Electricity Supplier a replacement EPSSA Guaranty and a Rating Confirmation with respect to such assignment.

### *Defaults and Termination Events*

*J. Aron Default.* Each of the following events constitutes a “*J. Aron Default*” under the Electricity Purchase, Sale and Service Agreement:

- (a) J. Aron fails to pay when due any amounts owed to the Electricity Supplier pursuant to the Electricity Purchase, Sale and Service Agreement and such failure continues for five days after receipt by J. Aron of notice thereof, unless GSG has made such payment under the EPSSA Guaranty;
- (b) certain bankruptcy or insolvency events with respect to J. Aron; or
- (c) the EPSSA Guaranty ceases to be in full force and effect or is declared to be null and void, or GSG contests the validity or enforceability of the EPSSA Guaranty; provided that no such event will occur as a consequence of GSG becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding.

*Electricity Supplier Default.* Each of the following events constitutes a “*Electricity Supplier Default*” under the Electricity Purchase, Sale and Service Agreement:

- (a) the Electricity Supplier fails to pay when due any amounts owed to J. Aron pursuant to the Electricity Purchase, Sale and Service Agreement and such failure continues for thirty Business Days after receipt by the Electricity Supplier of notice thereof; or
- (b) certain bankruptcy or insolvency events with respect to the Electricity Supplier.

*Optional Non-Default Termination Event.* An “Optional Non-Default Termination Event” under the Electricity Purchase, Sale and Service Agreement will occur if the Project Participant makes a Remarketing Election with respect to any Reset Period under the Clean Energy Purchase Contract.

*Automatic Non-Default Termination Event.* The occurrence of an Electricity Delivery Termination Date under the Master Power Supply Agreement constitutes an “*Automatic Non-Default Termination Event*” under the Electricity Purchase, Sale and Service Agreement.

#### *Remedies and Termination*

Upon the occurrence of a J. Aron Default or an Electricity Supplier Default, the non-defaulting party may designate an early termination date under the Electricity Purchase, Sale and Service Agreement (a “*EPSSA Early Termination Date*”). Upon the occurrence of an Optional Non-Default Termination Event, the Electricity Supplier may designate a EPSSA Early Termination Date. A EPSSA Early Termination Date will occur automatically upon the occurrence of an Automatic Non-Default Termination Event.

If an Electricity Delivery Termination Date occurs, the Delivery Period for Electricity under the Electricity Purchase, Sale and Service Agreement will end and the obligations of the parties to deliver and receive Electricity will terminate.

#### *Security*

GSG has provided to the Electricity Supplier the EPSSA Guaranty, which guarantees J. Aron’s payment obligations under the Electricity Purchase, Sale and Service Agreement. None of CCCFA, the Trustee nor the Bondholders have rights to enforce the EPSSA Guaranty.

### **THE FUNDING AGREEMENT**

*Set forth below is a summary of certain provisions of the Funding Agreement. This summary does not purport to be a complete description of the terms and conditions of the Funding Agreement and accordingly is qualified by reference to the full text thereof. See Appendix K for a description of the Funding Recipient.*

#### *Amount and Term*

Upon its receipt of the prepayment amount under the Master Power Supply Agreement, the Electricity Supplier (as lender) will [make a term loan] in an approximately equal amount to [the Funding Recipient] (as borrower and Funding Recipient) under the Funding Agreement.

The term of the Funding Agreement will end on the second to last Business Day of the Initial Interest Rate Period for the Bonds (the “*Maturity Date*”).

#### *Repayment*

The Funding Recipient is required to repay the loan in the Scheduled Amounts which reflect a fixed interest rate. In the case of an acceleration of the Funding Agreement due to a Loan Event of Default (described below), the Funding Recipient’s sole remaining obligation under the Funding Agreement will be to pay a scheduled liquidation amount (the “*Final Payment Amount*”) on the last Business Day of the calendar month following the calendar month in which the Loan Event of Default occurs.

#### *[Extension of Term*

At any time commencing on the date that is 180 days prior to the Maturity Date, the Electricity Supplier may request that the Funding Recipient provide pricing proposals for an extension of the Funding

Agreement. The Funding Recipient agrees to propose pricing terms for two or more different extension lengths of the term of the Funding Agreement, which extension may not be less than the minimum length permitted for a Reset Period under and defined in the Re-Pricing Agreement. Such proposals shall indicate a fixed interest rate that would apply throughout each offered length of extension.

#### *Prepayment Option*

Commencing six months after the date of the Funding Agreement, the Funding Recipient has the right, but not the obligation, to prepay the loan in full by payment of the Final Payment Amount on any date on or after an Electricity Delivery Termination Date is designated under the Master Power Supply Agreement. The date for payment of the Final Payment Amount will be the last Business Day of the calendar month following the calendar month in which the Funding Recipient delivers notice to Electricity Supplier electing to prepay the loan.]

#### *Amendments*

The Electricity Supplier agrees in the Master Power Supply Agreement that it will not agree to any amendment, alteration, assignment or modification to the Funding Agreement without receipt of (a) a Rating Confirmation and (b) the prior written consent of CCCFA, except to (i) cure or correct any ambiguity, omission, defect or inconsistent provision, (ii) insert clarifying provisions that are not contrary to or inconsistent with the provisions of the Funding Agreement, or (ii) to convert or supplement any provision in a manner consistent with the intent of the Funding Agreement, the Master Power Supply Agreement, the Re-Pricing Agreement and the Electricity Supplier Commodity Swaps; provided that CCCFA's consent is not required in connection with (a) the replacement, refinancing or re-pricing of the Funding Agreement at the end of any Interest Rate Period or (b) the Electricity Supplier's assignment of its interest in the Funding Agreement or consent to Funding Recipient's assignment of its interest in the Funding Agreement to the extent if a Rating Confirmation is provided with respect to any such assignment.

#### *Loan Events of Default and Remedy*

Each of the following events constitutes an event of default under the Funding Agreement (each, a "Loan Event of Default"):

(a) the Funding Recipient defaults in the due and punctual payment of the Scheduled Amounts and such failure continues for 30 days after receipt by the Funding Recipient of notice thereof; or

(b) an involuntary case or other proceeding is commenced against the Funding Recipient seeking liquidation, reorganization or other relief with respect to it or its debts under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar law now or hereafter in effect or seeking the appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed, or an order or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect, in any such event, for a period of 60 days; or

(c) the Funding Recipient commences a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent, or shall consent to the entry of a decree or order for relief in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to

the commencement of any bankruptcy or insolvency case or proceeding against it, or if it shall file a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or consent to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Funding Recipient or any substantial part of its property, or shall make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or shall take corporate action in furtherance of any such action.

Upon the occurrence of a Loan Event of Default, without further action of either party, the Final Payment Amount (for the date that is the last Business Day of the calendar month following the calendar month in which such Event of Default occurs) will mature and become due and payable by the Funding Recipient, without the necessity of any presentment, demand, protest or further notice; *provided*, that upon the happening of any event described in clause (b) or (c) above, such Final Payment Amount shall automatically become immediately due and payable and the Funding Agreement shall terminate.

### **THE MASTER ELECTRICITY SUPPLIER CUSTODIAL AGREEMENT**

*Set forth below is a summary of certain provisions of the Master Electricity Supplier Custodial Agreement. This summary does not purport to be a complete description of the terms and conditions of the Master Electricity Supplier Custodial Agreement and accordingly is qualified by reference to the full text thereof.*

*Master Electricity Supplier Custodial Agreement.* The Electricity Supplier, J. Aron, CCCFA and The Bank of New York Mellon, as custodian (in such capacity, the “*Master Custodian*”), will enter into a SPE Master Custodial Agreement (the “*Master Electricity Supplier Custodial Agreement*”) to administer:

(a) the amounts payable to the Electricity Supplier under (i) the Funding Agreement, (ii) the Electricity Purchase, Sale and Service Agreement, (iii) the Master Power Supply Agreement, (iv) the Electricity Supplier Commodity Swaps and (v) the J. Aron Subordinated Loan; and

(b) the Funding Agreement and the amounts payable by the Electricity Supplier under (i) the Master Power Supply Agreement, (ii) the Electricity Purchase, Sale and Service Agreement, (iii) the Electricity Supplier Commodity Swaps and (iv) the J. Aron Subordinated Loan.

The Master Electricity Supplier Custodial Agreement establishes a revenue account (the “*Electricity Supplier Revenue Account*”) and a capital account (the “*Electricity Supplier Capital Account*”) with the Master Custodian. The amounts payable to the Electricity Supplier under Funding Agreement, the Electricity Purchase, Sale and Service Agreement, the Master Power Supply Agreement and the Electricity Supplier Commodity Swaps are to be paid directly into the Electricity Supplier Revenue Account.

Under the Master Electricity Supplier Custodial Agreement, the Master Custodian will, to the extent of the amounts on deposit in the Electricity Supplier Revenue Account, make monthly transfers for the payment of amounts due by the Electricity Supplier under the Electricity Supplier Commodity Swaps, the Master Power Supply Agreement and the Electricity Purchase, Sale and Service Agreement. Following these monthly transfers, any remaining funds in the Electricity Supplier Revenue Account are transferred to the Electricity Supplier Capital Account. Pending their application, the amounts in the Electricity Supplier Revenue Account are held in trust for the benefit of the Electricity Supplier.

The Electricity Supplier Capital Account will be initially funded by J. Aron with a cash equity contribution, the J. Aron Subordinated Loan, and if required a contingent subordinated loan that together

equal at least three percent of the outstanding (unamortized) amount of the prepayment under the Master Power Supply Agreement (approximately \$ \_\_\_\_ million as of the Initial Issue Date). Under the Master Electricity Supplier Custodial Agreement, the amounts in the Electricity Supplier Capital Account may be invested only in: direct obligations of the U.S. Treasury or obligations unconditionally guaranteed by the United States, in either case with a maturity of two years or less; certain certificates of deposit and demand deposits; and certain money market funds.

Amounts on deposit in the Electricity Supplier Capital Account shall be withdrawn by the Master Custodian pursuant to instructions provided by the Electricity Supplier and applied to: (a) meet the Electricity Supplier's collateral posting obligations under the credit support annex to the Electricity Supplier Commodity Swap; and (b) to make up any deficiency of the amounts on deposit in the Electricity Supplier Revenue Account for the purposes described above. The Master Custodian shall have a lien, security interest and right of set-off with respect to the Electricity Supplier Capital Account for the payment of any claim by the Master Custodian for compensation, reimbursement, or indemnity under the Master Electricity Supplier Custodial Agreement. The Electricity Supplier's repayment obligations under the J. Aron Subordinated Loan are subordinate to the Electricity Supplier's obligations under the Electricity Supplier Commodity Swaps, the Master Power Supply Agreement and the Electricity Purchase, Sale and Service Agreement. The Master Custodian shall only withdraw amounts on deposit in the Electricity Supplier Capital Account for payment of principal and interest on the J. Aron Subordinated Loan to the extent that (a) the Electricity Supplier has satisfied its payment obligations under the Electricity Supplier Commodity Swap, the Master Power Supply Agreement and the Electricity Purchase, Sale and Service Agreement in any given month, and (b) the amounts on deposit in the Electricity Supplier Capital Account exceed a minimum amount equal to the greater of (i) \$ \_\_\_\_\_ and (ii) three percent of the outstanding (unamortized) amount of the prepayment under the Master Power Supply Agreement.

### **GSG, J. ARON AND THE ELECTRICITY SUPPLIER**

*Set forth below is certain information regarding GSG, J. Aron and the Electricity Supplier that has been obtained from such persons and other sources believed to be reliable. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance is the Electricity Supplier, J. Aron or GSG obligated to pay any amounts owed in respect of the Bonds.*

GSG

GSG, together with its consolidated subsidiaries, is a leading global financial institution that delivers a broad range of financial services across investment banking, securities, investment management and consumer banking to a large and diversified client base that includes corporations, financial institutions, governments, and individuals. Founded in 1869, the firm is headquartered in New York and maintains offices in all major financial centers around the world.

GSG is a public company that is subject to the information requirements of the Securities Exchange Act of 1934, as amended, and in accordance therewith files reports, proxy statements and other information, including financial reports, with the Securities and Exchange Commission (the "SEC"). For further information concerning GSG and J. Aron, see

- GSG's Annual Report on Form 10-K for the fiscal year ended December 31, 2021;
- GSG's Quarterly Reports on Form 10-Q (i) dated and filed on May 2, 2022, and (ii) dated and filed on August 4, 2022;

- GSG’s Current Reports on Form 8-K (i) dated and filed on January 18, 2022, (ii) dated and filed on January 24, 2022, (iii) dated and filed on January 28, 2022, (iv) dated and filed on February 17, 2022, (v) dated and filed on March 15, 2022, (vi) dated and filed on March 21, 2022, (vii) dated and filed on March 28, 2022, (viii) dated and filed on April 14, 2022, (ix) dated and filed on April 29, 2022, (x) dated and filed on April 29, 2022, (xi) dated and filed on June 13, 2022, (xii) dated and filed on June 27, 2022, (xiii) dated and filed on July 18, 2022, (xiv) dated and filed on August 23, 2022, and (xv) dated and filed on September 22, 2022; and
- All documents filed by GSG under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 on or after the date of this Official Statement and prior to the date of the issuance of the Bonds.

These reports and other information are available for review at <http://www.sec.gov>, an internet site maintained by the SEC.

The senior unsecured long-term debt of GSG is rated “A” (stable outlook) by Fitch, “A2” (stable outlook) by Moody’s and “BBB+” (stable outlook) by S&P.

GSG has provided to the Electricity Supplier a guarantee of J. Aron’s payment obligations under the Electricity Purchase, Sale and Service Agreement (the “*EPSSA Guaranty*”). None of CCCFA, the Trustee nor the Bondholders have rights to enforce the EPSSA Guaranty. In addition, GSG has provided to CCCFA a guarantee with respect to J. Aron’s payment obligations under the Interest Rate Swap.

#### *J. Aron*

J. Aron, a participant in the commodities business for over 100 years, was acquired in 1981 by Goldman Sachs, and is the entity through which Goldman Sachs participates in Electricity markets. J. Aron is a registered swap dealer and market-maker for a wide array of commodity derivative contracts including Electricity.

J. Aron has market based rate authority from the FERC for energy, capacity and ancillary services sales at market-based rates. [Since 2006, J. Aron has executed twenty-five commodity prepayment transactions with municipal utilities and joint action agencies. Since 2018, J. Aron has enabled more than 1,500 MWs of renewable offtake transactions.]

#### *The Electricity Supplier*

*Organization.* The Electricity Supplier is a Delaware limited liability company organized for the sole purpose of entering into the transactions on its part with respect to the Clean Energy Project described herein. J. Aron is the sole member of the Electricity Supplier (the “*Member*”) and has funded the Electricity Supplier with the cash equity contribution and the subordinated loans described below (the “*J. Aron Subordinated Loan*”).

The Electricity Supplier is governed by a three-member board of directors. One director is appointed by J. Aron, one director is appointed by CCCFA, and the third director is an independent director appointed by J. Aron. The directors have appointed J. Aron as the manager of the Electricity Supplier.

The director appointed by CCCFA has the sole consent rights with respect to certain matters, including: the designation of a EPSSA Early Termination Date under the Electricity Purchase, Sale and Service Agreement; the designation of an Electricity Delivery Termination date under the Master Power

Supply Agreement due to the occurrence of a Ledger Event; the extension and enforcement of the Funding Agreement or the entry into a replacement thereto with a replacement Qualified Funding Recipient; under certain circumstances, the removal and replacement of J. Aron as manager; the appointment of a third-party Electricity Remarketing agent under the Master Power Supply Agreement in the event that there are private business use sales or non-qualified sales of Electricity that are not remediated within twelve Months; the removal and replacement of the Master Custodian (defined below); and certain determinations with respect to Reset Periods under the Re-Pricing Agreement. CCCFA covenants in the Indenture that, in any vote that comes before the board of directors of the Electricity Supplier regarding the Electricity Supplier Documents, it will instruct the CCCFA-appointed director to exercise its voting rights in favor of (a) the Electricity Supplier (i) observing and performing its obligations under the Master Power Supply Agreement and (ii) enforcing the provisions of the other Electricity Supplier Documents against the counterparties thereto, and (b) not permitting any assignment, rescission, amendment or waiver to or of the Electricity Supplier Documents which will in any manner materially impair or materially adversely affect the rights of CCCFA thereunder or the rights or security of the Bondholders under the Indenture.

The director appointed by J. Aron has sole consent rights with respect to other matters, including (a) the designation of an Electricity Delivery Termination Date under the Master Power Supply Agreement due to a termination of a CCCFA Commodity Swap, and (b) the termination or replacement of an Electricity Supplier Commodity Swap.

The independent director is required to consider only the interests of the Electricity Supplier and its creditors in acting or voting on certain material actions that require the unanimous consent of the directors. No resignation or removal of the independent director will be effective until a successor independent director has been appointed.

*FERC Application.* The Electricity Supplier has filed an application with the FERC for market based rate authority for energy, capacity and ancillary services sales at market-based rates.

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**Under no circumstance is the Electricity Supplier, J. Aron or GSG obligated to pay any amounts owed in respect of the Bonds.**

## **THE CLEAN ENERGY PURCHASE CONTRACT**

*Set forth below is a summary of certain provisions of the Clean Energy Purchase Contract during the Delivery Period. This summary does not purport to be a complete description of the terms and conditions of the Clean Energy Purchase Contract and is qualified by reference to the full text of the Clean Energy Purchase Contract.*

### *General*

Under the Clean Energy Purchase Contract, CCCFA has agreed to sell and deliver to the Project Participant, and the Project Participant has agreed to purchase and receive from CCCFA at the delivery point, quantities of Electricity, which shall be comprised of Assigned Electricity delivered to J. Aron pursuant to the Assignment Agreements, and, if there is insufficient Assigned Prepay Value, the Electricity Supplier is required to deliver Base Quantities, as set forth in the Clean Energy Purchase Contract.

The Clean Energy Purchase Contract will remain in full force and effect for a primary term ending at the end of the Delivery Period under the Master Power Supply Agreement; *provided, however*, that if the

Delivery Period under the Master Power Supply Agreement is terminated, the Clean Energy Purchase Contract will terminate on the Electricity Delivery Termination Date, subject to the provisions thereof.

For information regarding the Project Participant, see APPENDIX A.

### *Pricing Provisions*

*Contract Price.* For any month, the lesser of (i) the total quantity of Assigned Electricity (in MWh) delivered under the Clean Energy Purchase Contract in such month and (ii) the aggregate Assigned Prepay Quantities for such month, is referred to herein as “*Assigned Discounted Energy*.”

For any month, the amount, if any, by which (i) the total quantity of Assigned Electricity (in MWh) under the Clean Energy Purchase Contract in such month exceeds (ii) the aggregate Assigned Discounted Energy for such month, together with any associated assigned RECs, is referred to herein as “*Assigned PAYGO Electricity*.”

The “*Contract Price*” under the Clean Energy Purchase Contract means:

- (i) with respect to Base Quantities for any hour, means the (a) the Day-Ahead Market Price for such hour at the Base Delivery Point, less (b) the Electricity of a fixed price (in MWh) paid to the Electricity Supplier by CCCFA for Increased Base Quantities under the Master Power Supply Agreement, multiplied by the Monthly Discount Percentage;
- (ii) with respect to Assigned Discount Energy, (A) the applicable APC Contract Price(s) multiplied by (B) the result of 100% less the Monthly Discount Percentage; and
- (iii) with respect to Assigned PAYGO Electricity, the APC Contract Price(s), *provided* that Assigned PAYGO Electricity may be subject to an aggregate discount in a month in accordance with the Clean Energy Purchase Contract.

If Base Quantities are required to be remarketed pursuant to the Master Power Supply Agreement, the Electricity Supplier will remarket Base Quantities that would have otherwise been delivered as described in “THE MASTER POWER SUPPLY AGREEMENT — Electricity Remarketing.”

*CPA Monthly Payments.* Pursuant to the Clean Energy Purchase Contract, for each Month in which an EPS Energy Period is in effect, at the start of such month, the Project Participant will pay CCCFA the Contract Price multiplied by the Assigned Electricity delivered under the Clean Energy Purchase Contract in such month.

### *Assignment of Power Purchase Agreements*

*General.* The Project Participant will assign, pursuant to limited assignment agreements, [two (2)] power purchase agreements to J. Aron for delivery beginning [ ] 1, 202[ ]\*.

Commencing one year prior to the expiration of any EPS Energy Period, or otherwise immediately upon the early termination or anticipated early termination of an EPS Energy Period, the Project Participant shall exercise commercially reasonable efforts to assign the Assigned Rights and Obligations under one or more Assigned PPAs, and J. Aron has the right to consent to, pursuant to which the Project Participant is purchasing EPS Compliant Energy and associated attributes, and J. Aron will be obligated to sell and deliver

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\* Preliminary, subject to change.

Assigned Electricity it receives under all Assigned Rights and Obligations to the Electricity Supplier pursuant to the Electricity Purchase, Sale and Service Agreement, and the Electricity Supplier will be obligated to deliver such Electricity to CCCFA pursuant to the Master Power Supply Agreement.

J. Aron is obligated to exercise commercially reasonable efforts to obtain EPS Compliant Energy for ultimate redelivery to the Project Participant pursuant to the Clean Energy Purchase Contract. The delivery period for such EPS Compliant Energy (any such period, a “*J. Aron EPS Energy Period*”) obtained during the Initial Interest Rate Period shall not exceed the length of the Initial Interest Rate Period.

*Failure to Obtain EPS Compliant Energy.* To the extent an EPS Energy Period terminates or expires and the Project Participant and J. Aron have been unable to obtain EPS Compliant Energy for delivery, then the Electricity Supplier shall remarket the Base Quantities (assuming the Base Quantities do not qualify as EPS Compliant Energy) pursuant to the Master Power Supply Agreement, the obligations of the Project Participant and J. Aron described under this heading shall continue to apply and the Project Participant may not make any new commitment to purchase Priority Electricity during such a remarketing

*Adjustments to Base Quantities.* Base Quantity Reductions under the Clean Energy Purchase Contract have been calculated to reflect the expected Initial Assigned Rights and Obligations using the same methodology that would apply to determine Base Quantity Reductions in connection with the assignment of Replacement Assigned Rights and Obligations. Upon the termination or expiration of an EPS Energy Period, the Base Quantity Reductions will be revised as described under the heading “THE MASTER POWER SUPPLY AGREEMENT — Assignment of Power Purchase Agreements – Adjustments to Base Quantities.”

*Reconciling Assigned Delivered Value.* Differences between the Assigned Delivered Value for any Month and the Assigned Prepay Value for such Month will be reconciled as described under the heading “THE MASTER POWER SUPPLY AGREEMENT — Assignment of Power Purchase Agreements – Reconciling Assigned Delivered Value.”

*J. Aron Non-Payment to APC Party.* To the extent that J. Aron fails to pay when due any J. Aron Prepay Payment, and the Project Participant makes such payment to the applicable APC Party, CCCFA shall pay such amount to the Project Participant.

#### *Billing and Payment*

No later than the fifth day of each month during the Delivery Period (excluding the first month of the Delivery Period) and the first Month following the end of the Delivery Period, the Project Participant shall deliver to CCCFA a statement (a “*Purchaser’s Statement*”) listing (i) in respect of any Shortfall Quantity in the prior month, the Replacement Price applicable to such Shortfall Quantity, and (ii) any other amounts due to Purchaser in connection with the Clean Energy Purchase Contract with respect to the prior Months.

Not later than ten days following the end of the month during the Delivery Period, and the first month following the end of the Delivery Period, CCCFA must provide a monthly billing statement (a “*Billing Statement*”) to the Project Participant indicating (i) the total amount due to CCCFA for Electricity delivered in the prior month, (ii) any other amounts due to CCCFA or the Project Participant in connection with the Clean Energy Purchase Contract with respect to the prior months, and (iii) the net amount due to CCCFA or the Project Participant; *provided* that the Electricity Supplier’s delivery of a Billing Statement to CCCFA or the Project Participant pursuant to the Master Power Supply Agreement shall be deemed to satisfy CCCFA’s obligation to deliver a Billing Statement under the Clean Energy Purchase Contract. The due date for payment by the Project Participant will be (i) the [23rd] day of the month following the month

of delivery or (ii) the 10th day following the Project Participant's receipt of the billing statement (or if either of such days is not a business day, the preceding business day). If the Billing Statement indicates an amount due from CCCFA, then the due date for payment by CCCFA will be (i) the 28th day of the month following the most recent month to which such Billing Statement relates, or (ii) the 10th day following CCCFA's receipt of a Purchaser's Statement, or if either such day is not a Business Day, the following Business Day. If the Project Participant disputes the appropriateness of any charge or calculation in any billing statement, the Project Participant, within the time provided for payment, must notify CCCFA of the existence of and basis for such dispute and must pay all amounts billed by CCCFA, including any amounts in dispute. If it is ultimately determined that the Project Participant did not owe the disputed amount, CCCFA must pay the Project Participant the disputed amount plus interest.

#### *Annual Refunds*

CCCFA has agreed to provide an annual refund, if any, to the Project Participant from amounts available for distribution pursuant to the Indenture, which amount shall be credited to the next amount due from the Project Participant following the release of funds to CCCFA under the terms of the Indenture. In determining the amount of such refund, if any, CCCFA may reserve such funds (i) as may be required under the terms of the Indenture or (ii) with the prior written consent of the Project Participant, (a) to fund or maintain the Minimum Discount Percentage for any future Reset Period, (b) to fund or maintain any rate stabilization or working capital reserve, (c) to reserve or account for unfunded liabilities and expenses, or (d) for other costs of the Clean Energy Project.

#### *Covenants of the Project Participant*

*Operating Expense.* The Project Participant covenants (a) to make the payments on its part due under the Clean Energy Purchase Contract from the revenues of its electric utility system, and only from such revenues, as an item of operating expenses and a cost of purchase Electricity and (b) that in any future bond issue, swap, or other financial transaction undertaken in connection with its electric system, it will not pledge or encumber its revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under the Clean Energy Purchase Contract.

*Maintenance of Rates and Charges.* The Project Participant has covenanted and agreed that it will establish, maintain, and collect rates and charges for its electric system so as to provide revenues sufficient, together with all available electric system revenues, to enable it to pay to CCCFA all amounts payable under its Clean Energy Purchase Contract, and to pay all other amounts payable from the revenues of the Project Participant's electric system, and to maintain required reserves.

*Qualifying Use.* The Project Participant has agreed that it will (a) provide such information with respect to its electric utility system as may be requested by CCCFA in order to establish the tax-exempt status of the Bonds, and (b) act in accordance with such written instructions as tax counsel to CCCFA may provide from time to time that are reasonably necessary to enable CCCFA to maintain the tax-exempt status of interest on the Bonds. Without limiting the foregoing, the Project Participant has further agreed to sell or otherwise use the Electricity purchased under the Clean Energy Purchase Contract (a) in a "qualifying use" as defined in the applicable U.S. Treasury Regulation, (b) in a manner that will not result in any private business use of that Electricity within the meaning of Section 141 of the Code, and (c) consistent with its Federal Tax Certificate (collectively, the "*Qualifying Use Requirements*").

In the event that the Project Participant remarkets the Electricity it receives under the Clean Energy Purchase Contract in a manner that does not comply with the Qualifying Use Requirements due to fluctuations in its commodity needs, the Project Participant agrees to exercise commercially reasonable efforts to use the proceeds of such remarketing to purchase Electricity (other than Priority Electricity, which

are described below) for use in compliance with such Requirements. The Project Participant further agrees to provide quarterly reports to CCCFA with respect to the quantity of proceeds from sales of Electricity that were sold in a transaction that does not comply with the Qualifying Use Requirements and that have not been remediated by applying such proceeds to purchase Electricity that are used in compliance with the Qualifying Use Requirements. The amount of any such unremediated proceeds will be entered on the ledger system maintained by J. Aron under the Electricity Purchase, Sale and Service Agreement.

*Priority Electricity.* The Project Participant agrees to purchase and receive the Base Quantities and Assigned Quantities to be delivered under the Clean Energy Purchase Contract (a) in priority over and in preference to all other Electricity available to it that are not Priority Electricity; and (b) on at least a *pari passu* and non-discriminatory basis with other Priority Electricity. For purposes of this covenant and during the Delivery Period, “*Priority Electricity*” means Base Quantities and Assigned Quantities that (a) the Project Participant is obligated to take under a long-term agreement or (b) with respect to Energy, Energy that is generated using capacity that was constructed using the proceeds of tax-exempt bonds, notes, or other obligations.

#### *Delivery Points; Title and Risk of Loss*

*Assigned Electricity.* Assigned Electricity delivered under the Clean Energy Purchase Contract shall be Scheduled for delivery to and receipt at the applicable Assigned Delivery Point specified in the applicable Assignment Schedule. All other Assigned Electricity will be delivered pursuant to the terms of the applicable Assignment Agreement. Scheduling and transmission of Assigned Electricity shall be in accordance with the applicable Assignment Schedule.

*Base Electricity.* CCCFA is required to deliver Base Electricity to the Base Delivery Points and is responsible for arranging transmission and scheduling services with its Transmission Providers to deliver Base Electricity to the Base Delivery Point. The Project Participant is responsible for arranging transmission and scheduling with its Transmission Providers in accordance with their practices, to receive the Base Electricity at the Base Delivery Point (or, if the Electricity Supplier arranges and is responsible for transmission and scheduling services, then the Project Participant’s obligations as described in this paragraph shall be relieved *pro tanto*).

*Title.* Title to and risk of loss of the Energy delivered under the Clean Energy Purchase Contract shall pass from the CCCFA to the Project Participant at the applicable Delivery Point. The transfer of title and risk of loss for Assigned Electricity shall be in accordance with the applicable Assignment Agreement.

#### *Failure to Perform.*

To the extent that the Project Participant purchases Replacement Electricity with respect to any Shortfall Quantity, CCCFA shall pay to Project Participant an amount based on the Replacement Price, *less* the Contract Price which would have applied to such Electricity, *plus* an Administrative Fee, for the quantity of Replacement Electricity purchased. The Project Participant must exercise commercially reasonable efforts to mitigate the CCCFA’s damages.

If the Project Participant fails to take all or any portion of Base Quantities at any Delivery Point for any reason not due to *force majeure*, the Project Participant remains obligated to pay the Contract Price for such Base Quantities. Any net revenues received by CCCFA from the Electricity Supplier in connection with the sale of such Electricity to other municipal utilities will be credited to the Project Participant, up to the Contract Price.

Neither the Project Participant nor CCCFA has any liability to one another for any failure to take or deliver Assigned Electricity, except as described under the subheadings “THE MASTER POWER SUPPLY AGREEMENT — *Assignment of Power Purchase Agreements*” and “*Pricing Provisions — CPA Monthly Payments*” herein.

#### *Remarketing of Energy*

In the event (a) a quantity of Assigned Electricity less than the Assigned Prepay Quantity is delivered under the Clean Energy Purchase Contract in any Month during an Assignment Period for any reason, or (b) the Project Participant does not require all or any portion of the Base Quantities or Assigned Quantities to meet its requirements for Energy for any hour that it is obligated to purchase under its Clean Energy Purchase Contract as a result of (i) insufficient demand by its retail customers, or (ii) a change in Law, the Project Participant may request (and, in the case of clause (a), shall be deemed to request) that the Electricity Supplier sell such portion of Base Quantities or Assigned Electricity to (A) another Municipal Utility or (B) if necessary, another purchaser. Under the Master Power Supply Agreement, CCCFA arranges for sales through the Electricity Supplier in accordance with the remarketing provisions and procedures set forth in that agreement. If the Electricity Supplier successfully makes such a sale or sales, CCCFA must credit against the amount owed by the Project Participant to CCCFA the amount received from the Electricity Supplier, such credit not to exceed the Contract Price for the Energy so sold. See “THE MASTER POWER SUPPLY AGREEMENT — Energy Remarketing.”

#### *Force Majeure*

Except with regard to a party’s obligation to make payments under the Clean Energy Purchase Contract, neither party shall be liable to the other for failure to perform its obligations under the Clean Energy Purchase Contract to the extent such failure was caused by an event of “*Force Majeure*” (as defined in APPENDIX C).

#### *Default*

Each of the following is a default under the Clean Energy Purchase Contract:

- (a) Any representation or warranty made by a party in the Clean Energy Purchase Contract shall prove to have been incorrect in any material respect when made; and
- (b) A party fails to perform, observe or comply with any covenant, agreement or term contained in the Clean Energy Purchase Contract, and such failure continues for more than thirty days (in the case of the CCCFA) or more than fifteen days (in the case of the Project Participant) following the receipt of written notice thereof.

In addition, each of the following is a default by the Project Participant under the Clean Energy Purchase Contract:

- (a) Failure by the Project Participant to pay when due any amounts owed to CCCFA under the Clean Energy Purchase Contract, subject to certain grace periods;
- (b) The insolvency or bankruptcy of the Project Participant; and
- I The Project Participant fails to establish, maintain, or collect rates or charges adequate to provide revenues sufficient to enable the Project Participant to pay all amounts due to CCCFA under the Clean Energy Purchase Contract.

Upon the occurrence of a default by the Project Participant described in (b) above, the Clean Energy Purchase Contract will automatically terminate and all amounts due to the non-defaulting party will be immediately due and payable. Upon the occurrence of the other defaults described above, the non-defaulting party may terminate the Clean Energy Purchase Contract and/or declare all amounts due to it to be immediately due and payable. During the existence of a default, the non-defaulting party may exercise all other rights and remedies available to it at law or in equity, including without limitation mandamus, injunction and action for specific performance, to enforce any covenant, agreement or term of the Clean Energy Purchase Contract.

In addition to the remedies described above, during the existence of any default by the Project Participant, CCCFA may suspend its performance under the Clean Energy Purchase Contract and discontinue the supply of all or any portion of the Electricity otherwise to be delivered to the Project Participant under the Clean Energy Purchase Contract.

If CCCFA exercises its right to discontinue Electricity deliveries to the Project Participant, such service may only be reinstated, as determined by CCCFA, upon (a) payment in full by the Project Participant of all amounts then due and payable under its Clean Energy Purchase Contract and (b) unless otherwise agreed to by CCCFA, payment in advance by the Project Participant at the beginning of each month (for such time period as CCCFA deems appropriate) of amounts estimated by CCCFA to be due from the Project Participant for the future delivery of Electricity for such month. If the Project Participant fails to accept the Electricity tendered, CCCFA has the right to sell the Electricity to third parties.

In the event of any default, the non-defaulting party may bring any suit, action, or proceeding at law or in equity, including without limitation mandamus, injunction, and action for specific performance.

#### *Assignment*

The provisions of the Clean Energy Purchase Contract are binding on the successors and assigns of such contract. Neither party may assign the Clean Energy Purchase Contract to another party without the prior written consent of the other party, except that CCCFA may assign its interests to secure its obligations under the Indenture. Prior to assigning all or any part of its interest in the Clean Energy Purchase Contract, the Project Participant is required to deliver to CCCFA a Rating Confirmation from each rating agency then rating the Bonds. Any applicable Assignment Agreement will terminate concurrent with the assignment of the Clean Energy Purchase Contract.

#### *Project Participant Credit Enhancement*

Upon the failure of the Project Participant to make a payment under the Clean Energy Purchase Contract, the Trustee shall, on the last business day of the month, withdraw from the Debt Service Reserve Account and deposit into the Debt Service Account an amount equal to any deficiency that exists therein as a result of such nonpayment. The Debt Service Reserve Requirement is approximately equal to the two largest months of the maximum monthly Scheduled Debt Service Deposit during the Initial Interest Rate Period. Upon such a transfer, the Trustee will notify the Electricity Supplier to remarket Electricity, and the Electricity Supplier will then have the option, but not the requirement, to purchase Receivables from CCCFA.

Upon the final maturity of the Bonds or the occurrence of an Early Termination Payment Date under the Master Power Supply Agreement, the Trustee will put to the Electricity Supplier sufficient receivables, which the Electricity Supplier is required to purchase, to ensure the amounts in the Debt Service Reserve Account equal the Debt Service Reserve Requirement and the amounts in the Commodity Reserve Account equal the Minimum Amount. Pursuant to the Electricity Purchase, Sale and Service Agreement, J.

Aron has undertaken these obligations of the Electricity Supplier. The provisions described in this paragraph are collectively referred to herein as “Project Participant Credit Enhancement.”

## CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

### *General*

CCCFA is a joint powers authority formed pursuant to the Act and the joint powers agreement (“the *JPA Agreement*”) made among those public agencies which are its members. CCCFA was incorporated and organized in 2021 pursuant to by the members thereof at such time, those being Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy (each, a “*Founding Member*”).

Each Member is a community choice aggregator, and a public agency as defined in the Act, which operates a community choice aggregation program 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.

CCCFA was formed for, among other purposes, the purpose of financing energy prepayments which can be financed with tax advantaged bonds for the benefit of its Members.

### *Powers and Authority*

Under the provisions of the Act, CCCFA has all of the powers common to the Members, and any and all power in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations, including: (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, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations (a “*Prepayment Project*”). 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.

Under the provisions of the JPA Agreement and the Act, CCCFA has (among others) the following powers:

- (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 improvement
- (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 the JPA Agreement.

The JPA Agreement shall continue in full force and effect until terminated as provided in therein; *provided, however*, the JPA Agreement cannot be terminated while either (a) any bonds of CCCFA, including the Bonds, remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any bonds.

*Governance and Management*

*Board of Directors.* CCCFA is governed by a Board of Directors (the “*Board*”) consisting of one director for each Founding Member. The Board shall have the authority to provide for the general management and oversight of the affairs, property, and business 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. The General Manager would be responsible for the day-to-day operation and management of CCCFA. The names of the current directors of CCCFA are listed on the roster page at the front of this Official Statement.

*Management.* The Board has not appointed a General Manager or Assistant General Manager. CCCFA’s current management team consists of Garth Salisbury as Treasurer-Controller and Michael Callahan as General Counsel.

*CCCFA Projects*

CCCFA previously issued its bonds (a) on September 23, 2021 to purchase prepaid electricity from Morgan Stanley Energy Structuring, L.L.C. (“MSES”), which is delivered to its Members, East Bay Community Energy and Silicon Valley Clean Energy, (b) on November 24, 2021 to purchase prepaid electricity from Aron Energy Prepay 5 LLC, which is delivered to its Member, Marin Clean Energy, and (c) on July 12, 2022 to purchase prepaid electricity from MSES, which is delivered to its Member, East Bay Community Energy. Each series of bonds is secured by a separate bond indenture.

CCCFA may issue future bonds to purchase prepaid electricity supplies for sale to participating municipal utilities, with the revenues from such sales pledged to the payment of such bonds. Such revenues will not be pledged, nor may such revenues be used, to pay amounts due with respect to the Bonds.

In furtherance of its corporate and public purposes, CCCFA intends to acquire and finance supplies of electricity on a prepaid basis for sale to other community choice aggregators. CCCFA is currently developing additional Clean Energy Projects under transaction and financing structures that are expected to be generally similar to the structure of the Clean Energy Project. CCCFA can give no assurance as to the timing or terms of these projects or that they will be completed. A range of factors that are outside of the control of CCCFA, including the final negotiation of transaction documents, the approval of commodity supply contracts by the prospective project participants, changes in market prices and rates, the receipt of bond ratings, and other factors could result in these transactions not being completed.

Any additional Clean Energy Projects that may be undertaken by CCCFA will be separate and distinct transactions, and the bonds issued to finance these projects will be payable solely from the commodity sales and other revenues pledged for their payment. In no event will the Revenues and Trust Estate pledged to the payment of the Bonds be used to pay any other bonds of CCCFA.

#### *Separate Obligations*

THE BONDS, ANY FUTURE BONDS THAT MAY BE ISSUED BY CCCFA AND ANY FUTURE CONTRACTS THAT CCCFA MAY ENTER INTO TO ACQUIRE ADDITIONAL ENERGY OR ELECTRICITY ARE AND WILL BE SEPARATE AND DISTINCT OBLIGATIONS OF CCCFA. ANY FUTURE BONDS OR CONTRACTS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES PLEDGED BY THE INDENTURE TO THE PAYMENT OF THE BONDS, AND THE BONDS WILL NOT BE SECURED BY OR PAYABLE FROM THE REVENUES DERIVED FROM ANY FUTURE PROJECT, CLEAN ENERGY PROJECT OR CONTRACT OF CCCFA.

#### *Limited Liability*

CCCFA DOES NOT HAVE THE POWER TO LEVY AD VALOREM PROPERTY TAXES. ALL BONDS ISSUED BY CCCFA ARE PAYABLE SOLELY FROM THE REVENUES AND RECEIPTS DERIVED FROM ITS ACTIVITIES PURSUANT TO ITS STATUTORY PURPOSES AND POWERS AND IN ACCORDANCE WITH THE APPLICABLE FINANCING DOCUMENTS. THE BONDS ARE PAYABLE SOLELY FROM AND SECURED SOLELY BY THE TRUST ESTATE PLEDGED PURSUANT TO THE INDENTURE.

### **COMMUNITY CHOICE AGGREGATORS**

#### *General*

Section 331.1 of the Public Utilities Code provides for the establishment of “community choice aggregators” (a “CCA”). A CCA may be established by any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a community-wide electricity buyers’ program, and by any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Joint Powers Act, provided in either case that the entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003. “Local publicly owned electric utility” means a municipality or municipal corporation operating as a “public utility” and certain municipal utility districts, public utility districts, irrigation districts, or joint powers authorities that include one or more of these agencies and that owns generation or transmission facilities or furnishes electric services over its own or its members’ electric distribution systems.

### *Community Choice Service Model*

Once a community forms or joins a CCA, the CCA is the default energy provider in that community. The CCA procures energy for customers in that community, but the investor-owned utility for that community continues to provide transmission, distribution, and billing services to customers. Revenues from the sale of energy by the CCA are delivered by the investor-owned utility to the CCA as they are received over the course of the billing period.

### *Service Contract Requirements and Registration with the Public Utilities Commission*

CCAs are required to have an operating service agreement with the applicable investor-owned utility prior to furnishing electric service to consumers within its jurisdiction. The service agreement must include performance standards that govern the business and operational relationship between the CCA and the investor-owned utility. CCAs are also required to register with the California Public Utilities Commission (the “PUC”), which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters. Once notified of a CCA program, the applicable investor-owned utility is required to transfer all applicable accounts to the CCA within a 30-day period from the date of the close of the utility’s normally scheduled monthly metering and billing process.

### *Customer Participation and Opt-out Rights*

Participation in a CCA is voluntary. Each local government seeking to form or join a CCA must adopt an appropriate authorizing resolution or ordinance. When a community forms or joins a CCA, customers are given advance notice and have the choice to opt-out of the CCA program prior to or after transition to the CCA, and instead receive electricity from the applicable investor-owned utility. Customers that do not opt-out are automatically enrolled in the program. Customers have the option to opt out of the program subject to a fee.

### *Regulatory Compliance*

CCAs are “load-serving entities” and as such are required to comply with the renewable portfolio standards and reliability standards established by the PUC and the California Energy Commission (the “CEC”) and file integrated resource plans and other periodic reports with the PUC and the California Energy Commission.

### *Cost Recovery Related to Transfer of Customers to a CCA*

Although investor-owned utilities do not purchase power for CCA customers, they continue to deliver the power. Investor-owned utilities also have the obligation to provide electric service to customers that opt out of CCA service as the “provider of last resort.” In order to compensate investor-owned utilities for investments in power generation and long-term power purchase contracts associated with the loss of customers to CCAs, the PUC has established a “power charge indifference adjustment” (the “PCIA”) applicable to CCA customers. The PCIA is calculated by taking the difference between (i) the “actual portfolio cost” related to utility’s power procurement (e.g., utility-owned generation and purchased power), and (ii) the “market value of the portfolio,” which is measured by the Market Price Benchmark (the “MPB”) and the megawatt hours of generation.

The MPB is based on a PUC approved methodology for calculating the current market cost of renewables and natural gas-fueled power. If the investor-owned utility’s actual portfolio cost is above-market value, the departing load customers pay their share of the difference in the form of a PCIA based on their power consumption. The amount of the PCIA applicable to a CCA customer depends on when a

customer left the investor-owned utility and what the investor-owned utility's portfolio was at the time. Each departing load customer pays the assigned "vintage PCIA." For example, a customer who departed in 2019 pays the "2019 vintage PCIA" which only includes the above market costs of pre-2020 vintage power procured by the investor-owned utility.

In addition to PCIA charges, CCA customers are required to pay certain other "non-bypassable departing load charges", including a nuclear decommissioning charge, a public purpose charge and a cost allocation charge to pay for new resources needed for ongoing system reliability.

## THE COMMODITY SWAPS

*Set forth below is a summary of certain provisions of the Commodity Swaps. This summary does not purport to be a complete description of the terms and conditions of the Commodity Swaps and accordingly is qualified by reference to the full text of the Commodity Swaps.*

***Payments of fixed and floating amounts under the Commodity Swaps described herein are not made until and unless the Assignment Agreements terminate, the Assigned Rights and Obligations under the Assigned PPAs revert to the Project Participant, and Base Quantities are delivered by the Electricity Supplier. Base Quantities are not expected to be delivered during the Initial Interest Rate Period, and as such, payments under the Commodity Swaps are not expected to be made during the Initial Interest Rate Period.***

### *General*

CCCFA has entered into the CCCFA Commodity Swaps under which, if such Commodity Swaps become active upon the delivery of Base Quantities, CCCFA will pay a floating electricity price at a specified pricing point and will receive a fixed electricity price for notional quantities that correspond to the quantities of electricity and the related delivery point under the Master Power Supply Agreement. Under the CCCFA Commodity Swaps, if active, for each calendar month that the relevant floating price of electricity at the delivery point is greater than the fixed price specified in the CCCFA Commodity Swaps, CCCFA will be obligated to pay to the Commodity Swap Counterparties an amount equal to (x) the difference between the floating price and the fixed price multiplied by (y) a notional quantity equal to the quantity of electricity scheduled to be delivered at the delivery point during such month by the Electricity Supplier under the Master Power Supply Agreement. If the fixed price specified in the CCCFA Commodity Swaps is greater than the relevant floating price of electricity at a delivery point for a month, the Commodity Swap Counterparties will be obligated to pay CCCFA an amount equal to (x) the difference between the fixed price and floating price multiplied by (y) a notional quantity equal to the quantity of electricity scheduled to be delivered at the delivery point during such month by the Electricity Supplier under the Master Power Supply Agreement. If the relevant floating price for a calendar month is equal to the specified fixed price, no payment will be owed by either party to the other under the CCCFA Commodity Swaps.

The Electricity Supplier has entered into comparable Electricity Supplier Commodity Swaps with the same Commodity Swap Counterparties under which, if such Commodity Swaps become active upon the delivery of Base Quantities, the Electricity Supplier pays a fixed electricity price and receives a floating electricity price for the same notional quantities at the same pricing points.

Each of the Commodity Swaps has an initial term that commences on the date that deliveries begin under the Master Power Supply Agreement and extends for two calendar months. The Commodity Swaps have rolling two-month terms that renew automatically upon the payment due date of each monthly net settlement amount due thereunder through the term of the delivery period under the Master Power Supply

Agreement, unless an Electricity Delivery Termination Date occurs under the Master Power Supply Agreement.

#### *Form of Commodity Swaps*

Each of the Commodity Swaps has been entered into as a confirmation under a 2002 ISDA Master Agreement with certain amendments and elections under the Master Agreement that have been agreed to by the parties.

#### *Payment*

If such Commodity Swaps become active upon the delivery of Base Quantities, for each month of scheduled deliveries and notional amounts, each party with a net obligation under a Commodity Swap (based on the relative values of the fixed price and relevant index prices) will pay that net obligation to the other party. Payments, if any, under the Commodity Swaps are due in the calendar month following the month to which the applicable day-ahead market prices relate, on the [23rd] day of the month (or preceding business day) in the case of the Electricity Supplier Commodity Swaps and on the [24]th day of the month (or next business day) in the case of the CCCFA Commodity Swaps.

#### *Early Termination*

Each of the Commodity Swaps will be subject to early termination under certain circumstances. Early termination can be triggered automatically or upon the election by the non-defaulting party as summarized below.

No settlement or other termination payment (other than Unpaid Amounts) will be due to any party as a result of any early termination of any Commodity Swap.

*Automatic Termination of Commodity Swaps.* Each of the following events would result in the automatic termination of the CCCFA Commodity Swaps and the Electricity Supplier Commodity Swaps:

- the occurrence of an Electricity Delivery Termination Date under the Master Power Supply Agreement for any reason, in which case the Commodity Swaps will terminate automatically on such date;
- a party's failure to pay amounts when due under a CCCFA Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within three business days after notice; and
- delivery by CCCFA of a notice of termination of a CCCFA Commodity Swap results in the automatic termination of an Electricity Supplier Commodity Swap, and delivery by the Electricity Supplier of a notice of termination of an Electricity Supplier Commodity Swap results in the automatic termination of a CCCFA Commodity Swap.

*Elective Termination of a CCCFA Commodity Swap.* Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate a CCCFA Commodity Swap if it is not cured within the applicable cure period:

- a party becomes subject to certain insolvency events in the manner specified in the CCCFA Commodity Swaps;

- a credit support default with respect to a Commodity Swap Counterparty;
- a reduction below certain specified minimum ratings in the credit rating assigned by the applicable rating agency to (a) the senior, unsecured long-term debt obligations (not supported by third party credit enhancements) of a Commodity Swap Counterparty's Indirect Parent (defined below), or (b) if there is no such rating, then such Commodity Swap Counterparty's Indirect Parent's issuer rating (“[\_\_\_\_\_]’s Credit Rating”);
- amendment of the Indenture in breach of a Commodity Swap Counterparty's consent rights thereunder;
- the amendment, without a Commodity Swap Counterparty's consent, of certain provisions of the Master Power Supply Agreement relating to the termination or assignment thereof, or that would affect terminations of the Commodity Swaps; and
- CCCFA fails to promptly exercise its right to suspend all commodity deliveries under the Clean Energy Purchase Contract to the Project Participant in the event it fails to pay when due any amounts owed to CCCFA thereunder.

*Elective Termination of an Electricity Supplier Commodity Swap.* Each of the following events of default and termination events would provide the non-defaulting party or the affected party the right to terminate an Electricity Supplier Commodity Swap if it is not cured within the applicable cure period:

- if a party becomes subject to certain insolvency events in the manner specified in an Electricity Supplier Commodity Swap;
- a credit support default with respect to a Commodity Swap Counterparty or the Electricity Supplier;
- any reduction a Commodity Swap Counterparty's Indirect Parent's Credit Rating (as defined above) below certain specified minimum ratings;
- the amendment, without a Commodity Swap Counterparty's consent, of (a) certain provisions of the Master Power Supply Agreement relating to the termination or assignment thereof, or that would affect terminations of the Commodity Swaps or (b) certain provisions of the Receivables Purchase Provisions relating to the purchase of Swap Deficiency Call Receivables by the Electricity Supplier; and
- a party's failure to pay amounts when due under an Electricity Supplier Commodity Swap (notwithstanding any payments made by the Custodian under the Custodial Agreements) that is not remedied within one business day after notice.

*Other Listed Events.* The Commodity Swaps contain other listed events (including breach or repudiation, misrepresentation, illegality and certain tax and credit events) that do not give CCCFA, the Electricity Supplier or the Commodity Swap Counterparties the right to designate an early termination date, but which permit the non-defaulting party or the affected party to pursue such equitable remedies, including specific performance, as may be available.

*Replacement of Commodity Swaps.* See “THE MASTER POWER SUPPLY AGREEMENT — Replacement of Commodity Swaps” and “SECURITY FOR THE BONDS — Enforcement of Project Agreements — CCCFA Commodity Swaps” for a description of certain provisions of the Indenture and the

Master Power Supply Agreement regarding the replacement of a Commodity Swap that is terminated or subject to termination.

### *Custodial Agreements*

The Electricity Supplier will enter into separate Custodial Agreements, dated as of the Initial Issue Date (each, a “*Electricity Supplier Custodial Agreement*”), with each Commodity Swap Counterparty and [\_\_\_\_\_], as Trustee and as custodian (in such capacity, the “*Custodian*”), to administer payments under the Electricity Supplier Commodity Swaps. CCCFA will enter into separate Custodial Agreements, dated as of the Initial Issue Date (each, a “*CCCFA Custodial Agreements*,” and together with the Electricity Supplier Custodial Agreements, the “*Custodial Agreements*”), with each Commodity Swap Counterparty and the Custodian, to administer payments under the CCCFA Commodity Swaps. The Custodial Agreements contain provisions designed to mitigate risks to CCCFA and Bondholders resulting from a failure of a Commodity Swap Counterparty to make payments to CCCFA under a CCCFA Commodity Swap, and mitigate risks to the Electricity Supplier resulting from a failure of a Commodity Swap Counterparty to make payments to the Electricity Supplier under an Electricity Supplier Commodity Swap.

Payments made by the Electricity Supplier under the Electricity Supplier Commodity Swaps, if any, will be made to custodial accounts maintained by the Custodian under the Electricity Supplier Custodial Agreements. Such amounts will not be released until the Custodian has received confirmation that the amount payable to CCCFA by a Commodity Swap Counterparty under a CCCFA Commodity Swap for such month has been paid. If a Commodity Swap Counterparty does not make a required payment under a CCCFA Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that the Electricity Supplier paid under the corresponding Electricity Supplier Commodity Swap (which such amount is held in custody) to the Trustee for deposit in the Revenue Fund and that payment will be treated as a Commodity Swap Receipt. Additionally, if an Electricity Supplier Commodity Swap terminates, the Electricity Supplier will continue to make payments to the custodial account as if such Electricity Supplier Commodity Swap were still in effect until the earlier of (i) replacement of the affected Commodity Swap in accordance with the requirements of the Master Power Supply Agreement and (ii) termination of the Delivery Period under the Master Power Supply Agreement, and such payments will be used to ensure that CCCFA receives deposits in the Revenue Fund as described in the preceding sentence in the event that a Commodity Swap Counterparty does not make a required payment under a CCCFA Commodity Swap.

Payments made by CCCFA under the CCCFA Commodity Swaps, if any, will be made to custodial accounts maintained by the Custodian under the CCCFA Custodial Agreements. The amounts in each custodial account will not be released until the Custodian has received confirmation that the amount payable to the Electricity Supplier by a Commodity Swap Counterparty under an Electricity Supplier Commodity Swap for such month has been paid. If a Commodity Swap Counterparty does not make a required payment under an Electricity Supplier Commodity Swap and such payment remains unpaid after the expiration of any grace period, the Custodian will pay the amount that CCCFA paid under the corresponding CCCFA Commodity Swap (which such amount is held in custody) to the Electricity Supplier. Additionally, if a CCCFA Commodity Swap terminates, CCCFA will continue to make payments to the custodial account as if such CCCFA Commodity Swap were still in effect until the earlier of (i) replacement of the affected Commodity Swap in accordance with the requirements of the Master Power Supply Agreement and (ii) termination of the Delivery Period under the Master Power Supply Agreement, and such payments will be withdrawn by the Custodian and paid to the Electricity Supplier.

## **THE COMMODITY SWAP COUNTERPARTIES**

*Set forth below is certain information regarding the Commodity Swap Counterparties. CCCFA assumes no responsibility for such information and cannot guarantee the accuracy thereof. Under no circumstance are the Commodity Swap Counterparties obligated to pay any amount owed in respect of the Bonds.*

[TO COME]

## **THE INTEREST RATE SWAP**

*[General*

CCCFA will enter into the Interest Rate Swap in order to hedge its exposure to interest rate fluctuations on the Index Rate Bonds and more closely match its payment obligations on the Index Rate Bonds with its expected Revenues from payments under the Clean Energy Purchas Contract and the CCCFA Commodity Swap[s]. The term of the Interest Rate Swap will extend for the term of the Initial Interest Rate Period.

### *Payments under the Interest Rate Swap*

The Interest Rate Swap provides that J. Aron, as the Interest Rate Swap Counterparty, is obligated to pay CCCFA on the Business Day preceding each Interest Payment Date a floating amount equal to the amount of interest due on the Index Rate Bonds on such Interest Payment Date, and CCCFA is obligated to pay J. Aron a fixed amount semiannually calculated using a fixed rate and a notional amount equal to the principal amount of the Index Rate Bonds then Outstanding.

Interest Rate Swap Receipts received by CCCFA are deposited directly into the Debt Service Account. Interest Rate Swap Payments owed by CCCFA are payable from amounts on deposit in the Debt Service Account. Neither party will be obligated to make any payment (other than accrued and unpaid amounts) under the Interest Rate Swap upon early termination thereof.

### *Events of Default and Termination Events*

The Interest Rate Swap contains standard Events of Default and Termination Events set forth in the form of the 2002 ISDA Master Agreement (Multicurrency-Cross Border) published by the International Swap Dealers Association, Inc. (available at [www.isda.org](http://www.isda.org)), subject to such modifications contained in the Schedule to such ISDA Master Agreement as are generally applied to municipal counterparties.

The Schedule to the ISDA Master Agreement provides that certain of such Events of Default and Termination Events will not apply or provides for a modification to the remedies available upon the occurrence of such an event. The only Events of Default applicable to CCCFA and J. Aron are Section 5(a)(i) (Failure to Pay or Deliver) and Section 5(a)(vii) (Bankruptcy), as such Events of Default are modified in the Schedule. No Termination Events apply to CCCFA or J. Aron, other than an Additional Termination Payment if a Termination Payment Event occurs under the Clean Energy Purchase Contract. Neither CCCFA nor the Interest Rate Swap Counterparty is required to pay any termination payment, other than unpaid amounts, due upon an early termination of the Interest Rate Swap.]

## **CONTINUING DISCLOSURE**

*CCCFA.* CCCFA will enter into a Continuing Disclosure Undertaking (the “*Undertaking*”) for the benefit of the beneficial owners of the Bonds to send certain information annually and to provide notice of certain events to the MSRB’s EMMA system for municipal securities disclosures, pursuant to the requirements of Section (b)(5) of Rule 15c2-12 (“*Rule 15c2-12*”) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

A failure by CCCFA to comply with the Undertaking will not constitute an event of default under the Indenture or the Bonds and Beneficial Owners of the Bonds shall only be entitled to the remedies for any such failure described in the Undertaking. A failure by CCCFA to comply with the Undertaking must be reported in accordance with Rule 15c2-12 and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price.

The Undertaking and commitments of CCCFA described under this heading and in APPENDIX E hereto to furnish the above-described documents and information are agreements and commitments solely of CCCFA, and the Underwriter has no responsibility to ensure that CCCFA complies with any such Undertaking or commitment. In addition, the Underwriter makes no representation that any such documents or information will be furnished, or that any such documents or information so furnished will be accurate or complete, or sufficient for the purposes for which they may be used.

CCCFA has previously entered into continuing disclosure undertakings pursuant to Rule 15c2-12. CCCFA has adopted a written policy that sets forth procedures for compliance with the federal tax and continuing disclosure requirements applicable to its bonds. The policy includes, among other things, procedures that are intended to promote CCCFA’s compliance with the Undertaking.

During the five-year period preceding the date of this Official Statement, CCCFA has determined that certain financial information relating to one of its project participants for fiscal year ending June 30, 2021, was filed late. CCCFA subsequently filed such information on the Municipal Securities Rulemaking Board Electronic Municipal Market Access System. CCCFA has engaged BLX Group to assist with its continuing disclosure obligations.

*Project Participant.* Pursuant to its Clean Energy Purchase Contract, the Project Participant has agreed to provide to CCCFA certain annual operating and financial information, which information will enable CCCFA to comply with the Undertaking. Failure of the Project Participant to provide such information is not a default under the Clean Energy Purchase Contract, but any such failure entitles CCCFA to take such actions and to initiate such proceedings as shall be necessary to cause the Project Participant to comply with its undertaking as set forth in the Clean Energy Purchase Contract.

## LITIGATION

There are no legal proceedings pending against CCCFA relating to the issuance, sale or delivery of the Bonds which could adversely affect the Clean Energy Project. In addition, there is no litigation pending or, to the knowledge of CCCFA, threatened against or affecting CCCFA or in any way questioning or in any manner affecting the validity or enforceability against CCCFA of the Bonds, the Clean Energy Purchase Contract, the Master Power Supply Agreement, the CCCFA Commodity Swaps, the Receivables Purchase Provisions, the Investment Agreements, the Custodial Agreements, the Indenture, or the pledge of the Trust Estate under the Indenture.

The Project Participant reports that there is no litigation pending or, to its knowledge, threatened against it questioning or in any manner affecting the validity or enforceability of the Clean Energy Purchase Contract.

## FINANCIAL STATEMENTS

[CCCFA was formed in 2021, and consequently CCCFA has not yet produced audited financial statements. Pursuant to the Undertaking described under “CONTINUING DISCLOSURE” above, CCCFA has agreed to file its audited financial statements, commencing with its audited financial statements for its fiscal year ended December 31, 2021, on the MSRB’s EMMA system described above.]

The Project Participant’s audited financial statements for fiscal year 2020-21 are attached hereto as APPENDIX B. Baker Tilly US, LLP has provided its consent for the inclusion of the audited financial statements for fiscal year 2020-21 in this Official Statement.

Pursuant to the Undertaking described under “CONTINUING DISCLOSURE” above, CCCFA has agreed to file its audited financial statements and the audited financial statements of the Project Participant, commencing with its audited financial statements for its fiscal year ended December 31, 2021, and the Project Participant’s audited financial statements for its fiscal year ended June 30, 2022, on the MSRB’s EMMA system described above.

## FINANCIAL ADVISOR

Municipal Capital Markets Group, Inc., Greenwood Village, Colorado (the “*Financial Advisor*”), has served as financial advisor to CPA in connection with Clean Energy Project and the Bonds. Among other responsibilities, the Financial Advisor has provided advice and recommendations to CPA with respect to the structure, timing, terms of and similar matters relating to the Bonds, bond market conditions, costs of issuance and other matters relating to the Bonds and the Clean Energy Project. The Financial Advisor has also provided advice and recommendations to CPA, and has served as CPA’s “qualified independent representative,” with respect to the CCCFA Commodity Swap [and the Interest Rate Swap]. The Financial Advisor has reviewed this Official Statement, but has not audited, authenticated, or otherwise verified the information set forth herein, and makes no guaranty, warranty or representation with respect to the accuracy and completeness of the information contained in this Official Statement. The Financial Advisor’s fees are contingent upon the sale and delivery of the Bonds, and are based, in part, on the proceeds of the Bonds.

## UNDERWRITING

Goldman Sachs & Co. LLC (the “*Underwriter*”), pursuant to the purchase contract relating to the Bonds between CCCFA and the Underwriter, has agreed, subject to certain conditions, to purchase the Bonds from CCCFA at an aggregate purchase price of \$ \_\_\_\_\_ (representing the principal amount of the Bonds, plus original issue premium of \$ \_\_\_\_\_, less underwriter’s discount of \$ \_\_\_\_\_). The obligation of the Underwriter to purchase the Bonds is subject to certain terms and conditions set forth in the purchase contract. The Underwriter is obligated to purchase all the Bonds if any are purchased. The Bonds may be offered and sold to certain dealers and others at prices lower than the initial offering prices, and such initial offering prices may be changed from time to time by the Underwriter. The Underwriter has no obligations other than those that are set forth in the purchase contract. The payment of the Bonds is not guaranteed by the Underwriter.

Goldman Sachs & Co. LLC (together with its affiliates) is a full service financial institution engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Goldman Sachs & Co. LLC and its affiliates have provided, and may in the future provide, a variety of these services to CCCFA and to persons and entities with relationships with CCCFA, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, Goldman Sachs & Co. LLC and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, Electricity, currencies, credit default swaps and other financial instruments for their own accounts and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of CCCFA (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with CCCFA. Goldman Sachs & Co. LLC and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities, and instruments.

### **CERTAIN RELATIONSHIPS**

The Electricity Supplier, which is also the lender under the Funding Agreement, the Receivables Purchaser and a party to the Electricity Purchase, Sale and Service Agreement and the Electricity Supplier Commodity Swaps, is wholly owned by J. Aron. J. Aron is the sole member of the Electricity Supplier, the electricity seller under the Electricity Purchase, Sale and Service Agreement, and the Interest Rate Swap Counterparty, and is a wholly-owned subsidiary of GSG. The payment obligations of J. Aron to the Electricity Supplier under the Electricity Purchase, Sale and Service Agreement and to CCCFA and the Trustee under the Investment Agreements and the Interest Rate Swap are unconditionally guaranteed by GSG under the EPSSA Guaranty. [GSG is the borrower under the Funding Agreement with the Electricity Supplier.] The Underwriter of the Bonds, Goldman Sachs & Co. LLC, is also a wholly owned subsidiary of GSG.

None of the Electricity Supplier, J. Aron nor GSG has guaranteed or is responsible for the payment of the Bonds. The obligations of the Electricity Supplier are limited to those set forth in the Master Power Supply Agreement, the Receivables Purchase Provisions and the Electricity Supplier Commodity Swaps. The obligations of J. Aron are limited to those set forth in the Electricity Purchase, Sale and Service Agreement and the Interest Rate Swap. None of the Electricity Supplier, J. Aron nor GSG takes any responsibility for the information set forth in this Official Statement other than the information set forth under the caption “GSG, J. ARON AND THE ELECTRICITY SUPPLIER.”

### **RATING**

Moody’s Investors Service, Inc. has assigned a municipal bond rating of “[ ]” to the Bonds.

CCCFA has furnished to each rating agency that is expected to rate the Bonds certain information, including information not included in this Official Statement, about CCCFA and the Bonds. Generally, a rating agency bases its ratings on that information and on independent investigations, studies and assumptions made by each rating agency. A securities rating is not a recommendation to buy, sell or hold securities. There is no assurance that a rating, once obtained, will continue for any given period of time or that it will not be revised downward or withdrawn entirely if, in the opinion of the rating agency, circumstances so warrant. Any such downward revision or withdrawal could have an adverse effect on the

marketability or market price of the Bonds. CCCFA has not undertaken any responsibility after issuance of the Bonds to assure the maintenance of the ratings applicable thereto or to oppose any revision or withdrawal of such ratings.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA, based upon an analysis of existing laws, regulations, rulings, and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX G hereto.

To the extent the issue price of any maturity of the Bonds is less than the amount to be paid at maturity of such Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the Bonds which is excluded from gross income for federal income tax purposes and State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Bonds is the first price at which a substantial amount of such maturity of the Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the Bonds accrues daily over the term to maturity of such Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Bonds. Beneficial Owners of the Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such Bonds in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a Beneficial Owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Bonds. CCCFA has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Bonds being included in gross income for federal income tax purposes, possibly from the date of original

issuance of the Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel's attention after the date of issuance of the Bonds may adversely affect the value of, or the tax status of interest on, the Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events, or matters.

Although Bond Counsel is of the opinion that interest on the Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the Bonds may otherwise affect a Beneficial Owner's federal, state, or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations, or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of CCCFA, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. CCCFA has covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the Bonds ends with the issuance of the Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend CCCFA or the Beneficial Owners regarding the tax-exempt status of the Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than CCCFA and its appointed counsel, such as the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which CCCFA legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues, may affect the market price for, or the marketability of, the Bonds, and may cause CCCFA or the Beneficial Owners to incur significant expense.

### **APPROVAL OF LEGAL MATTERS**

The validity of the Bonds and certain other legal matters are subject to the approving opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to CCCFA. A complete copy of the proposed form of the opinion of Bond Counsel is contained in APPENDIX F to this Official Statement.

Certain legal matters will be passed upon for CCCFA by Orrick, Herrington & Sutcliffe LLP; for the Project Participant by Chapman and Cutler LLP; for the Electricity Supplier by its counsel, Sheppard,

Mullin, Richter & Hampton LLP; for GSG by its counsel, Sullivan & Cromwell LLP; for [the Funding Recipient] by its counsel, [\_\_\_\_\_]; and for the Underwriter by Nixon Peabody LLP.

CCCFA will receive an opinion from counsel to the Project Participant on the date of original delivery of the Bonds, to the effect that the Clean Energy Purchase Contract has been duly authorized, executed and delivered by the Project Participant and constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms. The enforceability of the Clean Energy Purchase Contract may be limited by or subject to applicable bankruptcy, insolvency, moratorium, reorganization, other laws affecting creditors' rights generally and by general principles of equity, public policy and commercial reasonableness.

### MISCELLANEOUS

Any statements in this Official Statement involving matters of opinion, estimates or forecasts, whether or not expressly so stated, are intended as such and not as representations of fact. The Appendices attached hereto are an integral part of this Official Statement and must be read in conjunction with the foregoing material. This Official Statement is not to be construed as a contract or agreement between CCCFA and the purchasers or owners of the Bonds.

The delivery of this Official Statement has been duly authorized by the Board of Directors of CCCFA.

CALIFORNIA COMMUNITY CHOICE FINANCING  
AUTHORITY

By: \_\_\_\_\_

## APPENDIX A

### THE PROJECT PARTICIPANT

#### CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

##### General

Clean Power Alliance of Southern California (“CPA”) is a joint powers authority organized and existing pursuant to the Joint Exercise of Powers Act (constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500), as amended or supplemented from time to time) (the “*Joint Powers Act*”), as a “community choice aggregator” (“CCA”) as defined in Section 331.1 of the Public Utilities Code of the State of California, as amended (the “*Public Utilities Code*”). For a general description of “community choice aggregators” in California, see the section “COMMUNITY CHOICE AGGREGATORS” in this Official Statement.

The parties to CPA’s Joint Powers Agreement (described below) consist of local governments whose governing bodies elect to join CPA. Pursuant to the Public Utilities Code, when new parties join CPA, all electricity customers in its jurisdiction, with the exception of customers served under California’s Direct Access Program, automatically become default customers of CPA for electric generation, provided that customers are given the option to “opt out”.

##### Formation and History of CPA

*General.* CPA, formerly known as Los Angeles Community Choice Energy, was created in 2017 pursuant to a Joint Powers Agreement, as amended, by and among the cities and counties participating in CPA and named therein. CPA was established to study, promote, develop, conduct, operate, and manage energy programs in Southern California. Governed by a Board of Directors made up of elected officials from each of its local member communities, CPA has the authority to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. CPA acquires electricity from commercial suppliers and delivers it through existing physical infrastructure and equipment managed by the California Independent System Operator (“CAISO”) and Southern California Edison (“SCE”).

*Commencement of Service and Expansion.* CPA began operations in February 2018 by serving approximately 1,800 municipal accounts. In June 2018, it enrolled approximately 28,000 municipal and commercial accounts. CPA enrolled approximately 900,000 residential customer accounts in February 2019, approximately 70,000 commercial accounts in May 2019, and approximately 4,500 residential and commercial accounts in June 2020.

##### Service Area

*Communities Served by CPA.* CPA currently serves the following communities in Los Angeles and Ventura counties as well as the unincorporated areas of Los Angeles and Ventura counties:

Agoura Hills	Arcadia
Alhambra	Beverly Hills
Calabasas	Camarillo
Carson	Claremont
Culver City	Downey
Hawaiian Gardens	Hawthorne
Manhattan Beach	Malibu

Moorpark  
 Ojai  
 Redondo Beach  
 Santa Monica  
 Simi Valley  
 Temple City  
 Thousand Oaks  
 Westlake Village  
 Unincorporated Los Angeles County

Paramount  
 Oxnard  
 Rolling Hills Estates  
 Sierra Madre  
 South Pasadena  
 Whittier  
 West Hollywood  
 Ventura  
 Unincorporated Ventura County

*Service Area Map.* The service area of CPA is shown on the map below:



**Governance and Management**

*Board of Directors.* CPA is governed by its Board of Directors. Each community that has elected to join CPA appoints a representative to the Board of Directors, who must be a member of the governing body of the local community (i.e., City Council or Board of Supervisors). Members of the Board of Directors serve at the pleasure of their respective communities’ governing body. Meetings of the full Board of Directors are scheduled every month. The Executive Committee, Community Advisory Committee, Energy Planning & Resources Committee, Finance Committee, and Legislative & Regulatory Committee, with members from the Board of Directors, review and report to the Board on various matters. An active and well-informed Board of Directors ensures that CPA’s energy procurement, risk management, rate setting, and programmatic activities are aligned with its mission.

*Management.*

Ted Bardacke, Chief Executive Officer. Mr. Bardacke works with the Board of Directors and CPA's experienced staff to develop and implement CPA's strategy to rapidly decarbonize Southern California's electricity system, provide customer choice and competitive rates, and deliver customer programs that benefit the CPA community.

Prior to CPA, he worked for Los Angeles Mayor Eric Garcetti, where he was Director of Infrastructure for the City of Los Angeles and Deputy Director of the Mayor's Sustainability Office. Prior to that, Mr. Bardacke worked in the Green Urbanism Program at Global Green USA, and in the 1990s served as a foreign correspondent for the Financial Times of London, based in Mexico City and Bangkok.

Mr. Bardacke holds degrees from Wesleyan University and the Graduate School of Architecture at Columbia University and taught at UCLA's Luskin School of Public Affairs for 10 years. He currently serves as Vice President of the California Community Choice Association ("CalCCA"). Founded in 2016, CalCCA's mission is to create a legislative and regulatory environment that supports the development and long-term sustainability of locally run CCAs in California. Mr. Bardacke is also a Board Member of CCCFA.

David McNeil, Chief Financial Officer. Mr. McNeil oversees CPA's financial and risk management operations. Prior to joining Clean Power Alliance, he served as Manager of Finance for Marin Clean Energy ("MCE"), where he led the effort to arrange for MCE to receive an investment grade credit rating (Baa2) from Moody's, the first CCA in the country to have achieved a credit rating. Mr. McNeil has 20 years of experience in financial oversight, credit management, strategic planning and risk management and is a Chartered Financial Analyst charter holder and earned a Bachelor of Arts, History from Queen's University, Kingston.

Matthew Langer, Chief Operating Officer. Mr. Langer is Chief Operating Officer for Clean Power Alliance, leading internal operations, strategy, regulatory affairs, and power procurement. He has broad renewable energy and utility experience, including deep expertise in renewable energy project development, contracting, and operations. Mr. Langer spent nine years at Southern California Edison where he held roles in energy procurement, corporate strategy, transmission and distribution, and customer service. Mr. Langer earned an MBA from the University of Southern California Marshall School of Business and his bachelor's in Management from Tulane University.

Nancy Whang

[bio to be added]

## **Customers**

*General.* CPA provides energy to approximately one million residential, commercial, and industrial accounts serving over 3 million residents and businesses in its service area. The current mix of CPA's customer base is approximately 49% residential and 51% commercial & industrial by percentage of both load served and as a percentage of revenues. Residential and small and medium businesses represent 80% of CPA's load. The largest industrial customers, receiving energy at the sub-transmission level, represent 2% of CPA's load. No single customer represents more than 0.7% of CPA's load.

*Customer Energy Choices.* CPA's goal is to provide customers with competitively priced and affordable electricity with high renewable energy content and low greenhouse gas emissions. CPA currently offers its customers three electricity rate products to choose from: "Lean Power", "Clean Power" and "100% Green Power". Lean Power service provides 40% carbon free energy content, Clean Power

service provides 50% clean power (40% renewable content and 10% hydroelectricity), and 100% Green Power service provides 100% renewable energy content.

*Customer Enrollment.* Communities served by CPA elect to be enrolled in Lean Power, Clean Power or 100% Green Power service. The communities currently enrolled in Lean Power, Clean Power and 100% Green Power are set forth below:

**Lean Power**

Arcadia\*  
Paramount\*  
Simi Valley\*  
Temple City\*  
Westlake Village\*  
Whittier\*\*

**Clean Power**

Alhambra\*\*  
Carson\*\*  
Downey\*\*  
Hawaiian Gardens\*\*  
Moorpark\*\*

**100% Green Power**

Agoura Hills  
Calabasas  
Claremont  
Hawthorne  
Malibu  
Oxnard  
Rolling Hills Estates  
Sierra Madre  
Thousand Oaks  
Ventura  
Unincorporated Ventura County

Beverly Hills  
Camarillo  
Culver City  
Manhattan Beach  
Ojai  
Redondo Beach  
Santa Monica  
South Pasadena  
West Hollywood  
Unincorporated Los Angeles County\*\*\*

\* Default Change to 100% Green scheduled for October 2023

\*\* Default Change to 100% Green scheduled for non-residential customers in October 2023.

\*\*\* Default Change to 100% Green scheduled for low-income residential customers in October 2024.

*New Customers.* On September 1, 2022, the CPA Board of Directors authorized the offer of membership to three cities: Hermosa Beach, Monrovia, and Santa Paula. In total, the three jurisdictions have approximately 47,000 customers with an annual load of ~440 GWh (3.7% of CPA load). Each city must pass an ordinance to join CPA’s Joint Powers Authority by November 30, 2022, in order to begin receiving CPA service in 2024. Each city may choose a default rate at that time or alternatively defer the decision to 2023.

*Customer Election to Opt-out of CPA Service.* Customers can “opt-out” of CPA service and receive service from SCE, prior to initial enrollment in CPA or at any time after CPA becomes their energy provider. There is no charge for a customer to opt-out of CPA service. Customers that elect to opt-out during an enrollment period return to service with SCE commencing with the next billing period. Customers that elect to opt-out after an enrollment period must either wait for six months during which time they continue to receive service from CPA or receive service from SCE for six months at a floating market rate referred to as Transitional Bundled Pricing. Most large customers that opt-out and return to service with SCE outside an enrollment period will elect to continue receiving service from CPA for the six-month waiting period to avoid exposure to market prices.

*Cumulative Opt-Out Rate and Customer Retention.* Since the completion of CPA's major enrollment activities at the end of 2019, its customer participation rate (count of enrolled customers/count of eligible customers) has consistently been over 90%. Since commencement of service in 2018, CPA's cumulative opt-out rate by load is approximately 16.6% as of July 2022. The vast majority of opt-outs occur prior to and during enrollment periods. Since the last major enrollment of customers in May 2019, opt-outs have been steady at approximately 1% per year. Customers moving into an existing CPA service area are automatically enrolled in CPA service which has contributed to an increase in participation rates and a consistent number of active customers over the past several years. Management believes that the most price sensitive customers, and customers who prefer to receive service from SCE for a variety of reasons, have already opt-out of service with CPA.

## **Service Rates**

*General.* Rates for CPA energy service are determined by its Board of Directors and are not regulated by the California Public Utilities Commission ("CPUC"). A customer's total cost of electric service is determined by CPA's charges for energy and SCE charges for transmission, distribution, and other non-by-passable charges. Additionally, CPA's customers pay a Power Charge Indifference Adjustment ("PCIA") rate which can vary annually based upon a number of market factors including benchmarks for regional energy costs, resource adequacy, the year in which their community joined CPA and other considerations. These charges, inclusive of the PCIA, establish the all-in cost of service to CPA's customers. At current rates, CPA's charges for energy plus the PCIA represents on average approximately 37% of a residential customer's total bill.

*Determination of Rates for Electricity.* The rates for CPA's Lean Power, Clean Power, and 100% Green Power products are designed to ensure revenue sufficiency while providing customers with stable rates that are competitive with those offered by SCE. Pursuant to the terms of the Clean Energy Purchase Contract, CPA covenants that it will establish, maintain, and set rates and charges so as to provide revenues sufficient to enable it to pay any and all amounts payable from the revenues of its operations and to maintain any reserves as required by CPA's reserve policies. CPA further covenants and agrees that it shall not pledge or encumber its revenues through a gross revenue pledge or in any other way which creates a prior or superior obligation to its obligation to make payments under the Clean Energy Purchase Contract.

*Current and Historical Rate Information.* On July 1, 2022, CPA adopted new rates for FY2022/23 under which CPA Lean rates are priced 1% lower than SCE's rates, Clean rates are priced at parity with SCE's rates, and 100% Green rates are priced at 3% higher than SCE's rates.

Prior to February 2021, on a total bill basis and inclusive of the PCIA, CPA Lean rates were 1-2% lower than SCE's charges, Clean rates were on-par with SCE's charges, and 100% Green rates were 7-9% higher than SCE's charges. In February 2021, SCE rate changes resulted in CPA Lean, Clean and 100% Green rates that were on average (inclusive of the PCIA and on a total bill basis) 2%, 2-3%, and 10% higher than SCE's rates, respectively. In June 2021, CPA's Board approved rate increases effective July 1, 2021, resulting in Lean, Clean and 100% Green rates that were on average (inclusive of the PCIA and on a total bill basis) 3-7%, 3-8%, and 4-11% higher than SCE's rates, respectively. CPA's competitive position improved relative to SCE beginning in March 2022, when SCE's generation rates increased by approximately 18% while the PCIA levied on CPA customers decreased by approximately 85%. These two factors reduced CPA customers' bills by 6-7% while CPA rates remained at their July 2021 levels.

CPA rates are designed to cover the costs of energy, resource adequacy, and operating costs, fund customer programs, and meet CPA's reserve and liquidity goals described in its Reserve Policy.

## **Effects of COVID-19 on CPA Operations and Finances**

*Remote Operations.* In response to the pandemic, CPA moved to a “remote work environment” in March 2020 with no disruption in services to our customers. CPA began phasing in a return to in-person work conditions in 2021 and has maintained a hybrid in-person/remote work policy through the present.

*Effects on Energy Load.* Pandemic-related load reductions in the small and medium commercial sectors were offset by increases to residential usage, with no net reduction in overall load during the period.

*Payment Delinquencies and Bad Debt Reserves.* CPA accounts receivable are billed and collected by SCE. During the pandemic CPA experienced an increase in past due accounts receivable resulting from the recession and a moratorium on disconnections and late payment fees required by the CPUC. Management monitors accounts receivable closely and adjusts Bad Debt Reserves in response to the aging of receivables, market events and other factors. Management believes that bad debt reserves are conservatively estimated and, at the time of estimate, are the best estimate of customer non-payment.

*Financial Assistance.* In 2020-2021, CPA provided \$2 million in immediate COVID-19 bill credits to approximately 77,000 residential and small business customers. In 2021, CPA instituted a rate freeze for CARE (low-income) customers keeping their rates at 2020 levels. That rate freeze was later extended until September 30, 2022.

CPA customers received additional financial assistance from the state of California. The State Budget Act of 2021 created and funded the California Arrearage Payment Program (“CAPP”) to provide financial assistance to active and inactive residential and commercial customer accounts reflecting delinquent balances incurred during the COVID-19 pandemic relief period (March 4, 2020 through June 15, 2021). CPA customers received \$15.8 million in financial assistance through the 2021 CAPP, for which payment was applied to customer accounts in early 2022. The State Budget Act of 2022 appropriated additional funds for CAPP and extended the eligibility period to cover electric bills for active residential customers issued between March 4, 2020 and December 31, 2021. CPA’s active residential customers are expected to receive approximately \$11.4 million in early 2023 through the 2022 CAPP.

## **California Renewable Portfolio Standards and Other Regulations**

*General.* Community choice aggregators such as CPA are “load-serving entities” (“LSEs”) and as such are required to comply with California’s Renewable Portfolio Standard (“RPS”), Resource Adequacy (“RA”) requirements and Power Source Disclosure requirements described below.

*Renewable Portfolio Standard.* California’s RPS requires LSEs to supply their retail sales with minimum quantities of eligible renewable energy. Senate Bill 100 directs all LSEs to procure 60% of their portfolios from RPS-eligible resources by 2030, and 100% of their retail sales from zero-carbon resources (or eligible renewable resources) by 2045. CPA has exceeded the annual RPS regulatory minimum requirements each year since its inception. In 2021, CPA met 47.3% of its total retail sales with eligible RPS resources, above the 2021 RPS percentage target of 35.75%.

*Resource Adequacy.* RA, a California program jointly administered by the CPUC, the California Energy Commission (“CEC”) and the CAISO, establishes RA obligations applicable to all LSEs within the CPUC’s jurisdiction, including investor-owned utilities (IOUs), energy service providers (ESPs), and CCAs. The goals of the RA Program are to provide sufficient resources to the CAISO to ensure the safe and reliable operation of the grid in real time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. The RA Program is comprised of three products: System RA; Local RA; and Flexible RA. Local RA obligations will be assigned to a Central Procurement Entity starting in 2023. In addition, per CPUC Decision 19-11-016, LSEs are required to

procure “Incremental System Capacity,” which is RA capacity that is in addition to the identified resources on the CPUC’s 2022 baseline list of resources.

*Power Source Disclosure.* California law requires LSEs to disclose the types of power resources used to supply retail sales. This mandate, known as the Power Source Disclosure Program (“PSDP”), is a consumer information program managed by the CEC on an annual basis. A key output of the PSDP is the Power Content Label (“PCL”). The PCL is an LSE-specific document that shows the breakdown of power resource types for each of the LSE’s energy products used to serve retail load, as well as a breakdown of resource types for the overall California grid. The PCL is distributed to customers each summer.

## Energy Demand

*Long-term Load Forecast.* CPA’s long-term load forecast is a 10-year projection of electricity that will be consumed by CPA’s customers. CPA’s long-term load forecast considers the number and types of customers that CPA expects to serve, historical electricity use patterns, temperature and other weather conditions, as well as trends in energy efficiency, behind-the-meter, rooftop solar and electric vehicle adoption, appliance electrification and other factors. The forecast is stated in terms of retail and in wholesale load, which includes an estimate of electricity losses in the distribution system.

The table below shows CPA’s long-term retail and wholesale load forecast for 2022 through 2031.

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Gross Retail Load (GWh)	10,825	10,930	11,090	11,157	11,255	11,369	11,483	11,546	11,626	11,734
Gross Wholesale Load (GWh)	11,513	11,624	11,794	11,865	11,970	12,091	12,212	12,280	12,365	12,480

## Sources of Energy

*Energy Purchases.* During the normal course of business, CPA purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as wholesale sales and generation credits, and load and other charges arising from CPA’s participation in the CAISO’s centralized market. The cost of electricity and capacity is recognized as “Cost of electricity” in the Statements of Revenues, Expenses and Changes in Net Position. To comply with the State of California’s RPS and other product content targets, CPA acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (“RECs”) recognized by the Western Renewable Energy Generation Information System (“WREGIS”). CPA obtains RECs with the intent to retire them and does not sell or build surpluses of RECs with a profit motive. CPA purchases capacity commitments from qualifying generators to comply with the RA Program. CPA is in compliance with external mandates and self-imposed benchmarks.

*Energy Load and Supply Risk Management.* 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 manages 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.

*Procurement.* CPA procures energy and RA consistent with its Energy Risk Management Policy. Procurement is conducted through market-based transactions for products including Fixed Price Energy, Portfolio Content Category 1 (“PCCI”) Renewable Energy, PCC2 Renewable Energy, Carbon Free Energy, and RA Capacity, as well as through longer-term power purchase agreements (“PPAs”) entered into pursuant to statutory requirements as well as voluntary long-term resource acquisition decisions made independently by CPA pursuant to its Integrated Resource Plan or other Board-approved strategies. Short-term procurement is conducted through participation in the CAISO and in bilateral markets. CPA may use a variety of methods to procure long-term contracts, including competitive solicitations, bilaterally negotiated agreements, or regulatory proceedings, with oversight including shortlist approvals or procurement recommendations, provided by the Energy Resources & Planning Committee of the Board. Long-term procurement (contract terms greater than five years) is subject to Board approval.

*Planning for Extreme Weather Events.* CPA’s hedging policies allow for hedging in excess of expected load during seasons and at times of the day when extreme weather events tend to occur. As described in the next section, CPA currently has 382MW of operating and dispatchable energy storage assets that can be charged during periods of lower electricity use and discharged when temperatures and usage reach extreme levels. Additional storage assets under contract are expected to come online in the coming years. CPA’s residential customers were defaulted onto Time of Use rates in early 2022. Time of Use rates incentivize customers to reduce electricity use when usage and prices are highest. CPA also administers a demand response program (Power Response) and actively supports the CAISO and other state efforts to encourage customers to reduce electricity consumption during extreme heat events.

Further descriptions of CPA’s policies and procedures addressing energy procurement and risk management can be found on the CPA website at <https://www.cleanpoweralliance.org>. The reference to this website address is presented herein for informational purposes only, and information on such website is not incorporated by reference to this Official Statement.

## Energy Storage

*General.* CPA has entered into long-term Energy Storage Agreements (ESAs) for the following resources:

<b>Project Name</b>	<b>Location</b>	<b>Actual / Anticipated COD</b>	<b>Energy Storage Capacity (MW / MWh)</b>
Sanborn	Kern County, CA	November 2021	100 / 400
High Desert	San Bernardino County, CA	December 2021	50 / 200

Luna Storage	Los Angeles County, CA	August 2022	100 / 400
Arlington Energy Center II	Riverside County, CA	August 2022	132 / 528
Resurgence Solar II	San Bernardino County, CA	June 2023	40 / 160
Rexford	Tulare County, CA	October 2023	180 / 540
Daggett Solar Power 2	San Bernardino County, CA	October 2023	52 / 208
Daggett Solar Power 3	San Bernardino County, CA	November 2023	61.5 / 246
Arica Solar	Riverside County, CA	December 2023	71 / 284
Chalan	Kern County, CA	December 2023	25 / 100
Estrella	Los Angeles County, CA	December 2023	28 / 112
Desert Quartzite	Riverside County, CA	March 2024	150 / 600
Azalea	Kern County, CA	August 2024	38 / 152

The storage capacity procured under these contracts will allow CPA to store energy during off-peak hours while prices are low and discharge it during evening super peak hours while prices are high. Dispatchable storage assets are expected to offset wholesale costs to serve load during the evening super peak, significantly reducing CPA's exposure to energy price risk during these hours. ESAs also provide CPA with the opportunity to earn revenue from the sale of ancillary services to the CAISO.

### **Cyber Security**

CPA carries cyber risk insurance coverage against liabilities resulting from potential cyber security events in the aggregate amount of \$2 million.

### **Financial Information**

*Revenues from Energy Sales and Operating Expenses.* CPA derives its operating revenues primarily from energy sales to its customers. Operating revenues increased over the past four years as a result of retail rate increases and enrollment of new communities. Operating expenses, which are comprised primarily of energy procurement costs, increased primarily due to increased market prices and the enrollment of new communities.

*Other Sources of Revenue.* CPA receives revenue from sources other than retail customer sales including funding from the CPUC to support the Power Share program and from various other sources.

*Financial Statements.* For financial information related to CPA, see the annual audited financial statements of CPA for the fiscal years ended June 30, 2021 and June 30, 2020 attached to this Official Statement as Appendix B.

*Deposit Accounts.* CPA maintains its cash in both interest-bearing and non-interest-bearing demand and term deposit accounts at River City Bank of Sacramento, California. CPA's deposits with River City Bank are subject to California Government Code Section 16521 which requires that River City Bank collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of \$250,000 by 110%. CPA monitors its risk exposure to River City Bank on an ongoing basis. CPA's Investment Policy permits the investment of funds in depository accounts, certificates of deposit and the Local Agency Investment Fund program operated by the California State Treasury, United States Treasury obligations, Federal Agency Securities, commercial paper, money market funds and FDIC insured placement service deposits.

*Other Liquidity Sources.* In September 2021, CPA entered into a revolving credit agreement with JPMorgan Chase Bank to provide working capital and letters of credit. The available credit line under this agreement is \$80,000,000. The agreement expires on October 31, 2023 and is expected to be renewed.

## **APPENDIX B**

### **AUDITED FINANCIAL STATEMENTS OF THE PROJECT PARTICIPANT FOR FISCAL YEAR 2020-21**

**APPENDIX E**  
**FORM OF CONTINUING DISCLOSURE UNDERTAKING**  
FOR THE PURPOSE OF PROVIDING  
CONTINUING DISCLOSURE INFORMATION  
UNDER SECTION (b)(5) OF RULE 15c2-12

[closing date]

This Continuing Disclosure Undertaking (the “*Agreement*”) is executed and delivered by California Community Choice Financing Authority (“*CCCFA*”) in connection with the issuance of its \$ \_\_\_\_\_ Clean Energy Project Revenue Bonds Series 2022[B]-1 [(Green Bonds – Climate Bonds Certified)] (the “*Bonds*”). The Bonds are being issued pursuant to a Trust Indenture, dated as of \_\_\_\_\_ 1, 2022 (the “*Indenture*”), between CCCFA and [ \_\_\_\_\_ ], as trustee.

In consideration of the issuance of the Bonds by CCCFA and the purchase of such Bonds by the beneficial owners thereof, CCCFA covenants and agrees as follows:

1. Purpose of This Agreement. This Agreement is executed and delivered by CCCFA as of the date set forth below, for the benefit of the beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with the requirements of the Rule (as defined below). CCCFA represents that it will be the only “obligated person” within the meaning of the Rule with respect to the Bonds at the time the Bonds are delivered to the Participating Underwriter and that no other person is expected to become so committed at any time after the issuance of the Bonds.

2. Definitions. (a) The terms set forth below shall have the following meanings in this Agreement, unless the context clearly otherwise requires.

“*Annual Financial Information*” means the financial information and operating data described in *Exhibit I*.

“*Annual Financial Information Disclosure*” means the dissemination of disclosure concerning Annual Financial Information and the dissemination of the Audited Financial Statements as set forth in Section 4.

“*Audited Financial Statements*” means collectively, the audited financial statements of CCCFA and the Project Participant, each prepared pursuant to the standards and as described in *Exhibit I*.

“*Commission*” means the Securities and Exchange Commission.

“*Dissemination Agent*” means any agent designated as such in writing by CCCFA and which has filed with CCCFA a written acceptance of such designation, and such agent’s successors and assigns.

“*Electricity Supplier*” means Aron Energy Prepay 14 LLC and its successors and permitted assigns.

“EMMA” means the MSRB through its Electronic Municipal Market Access system for municipal securities disclosure or through any other electronic format or system prescribed by the MSRB for purposes of the Rule.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Final Official Statement” means the Final Official Statement dated \_\_\_\_\_, 2022, relating to the Bonds.

“Financial Obligation” means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of an obligation or instrument described in clause (a) or (b) of this definition; provided however, the term Financial Obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“Ledger Event” has the meaning assigned to such term in Exhibit C to the Master Power Supply Agreement.

“Master Power Supply Agreement” means the Master Power Supply Agreement dated as of \_\_\_\_\_, 2022 between the Electricity Supplier and CCCFA.

“Monthly Ledger Report” means the copies of the ledgers maintained by the Electricity Supplier pursuant to Exhibit C of the Master Power Supply Agreement and delivered each month to CCCFA pursuant to Section 9(b)(i) of such Exhibit.

“MSRB” means the Municipal Securities Rulemaking Board.

“Non-Private Business Sales Ledger” and “Private Business Sales Ledger” have the meanings assigned to such terms in Exhibit C to the Master Power Supply Agreement.

“Participating Underwriter” means each broker, dealer or municipal securities dealer acting as an underwriter in the primary offering of the Bonds.

“Reportable Event” means the occurrence of any of the Events with respect to the Bonds set forth in Exhibit II.

“Reportable Events Disclosure” means dissemination of a notice of a Reportable Event as set forth in Section 5.

“Rule” means Rule 15c2-12 adopted by the Commission under the Exchange Act, as the same may be amended from time to time.

“Undertaking” means the obligations of CCCFA pursuant to Sections 4 and 5.

(b) Capitalized terms used and not otherwise defined herein shall have the meanings assigned to them in the Indenture.

3. CUSIP Numbers. The CUSIP Numbers of the Bonds are as follows:

MATURITY (_____ 1)	AMOUNT	CUSIP NUMBER
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CCCFA will include the CUSIP Numbers (or applicable CUSIP Number) in all disclosure described in Sections 4 and 5 of this Agreement.

4. Annual Financial Information Disclosure. Subject to Section 9 of this Agreement, CCCFA hereby covenants that it will disseminate or cause to be disseminated on its behalf its Annual Financial Information and the Audited Financial Statements (in the form and by the dates set forth in *Exhibit I*) to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information and by such time so that such entities receive the information by the dates specified. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports.

If any part of the Annual Financial Information can no longer be generated because the operations to which it is related have been materially changed or discontinued, CCCFA will disseminate a statement to such effect as part of the Annual Financial Information for the year in which such event first occurs.

If any amendment or waiver is made to this Agreement, the Annual Financial Information for the year in which such amendment is made (or in any notice or supplement provided to EMMA) shall contain a narrative description of the reasons for such amendment and its impact on the type of information being provided.

5. Reportable Events Disclosure. Subject to Section 8 of this Agreement, CCCFA hereby covenants that it will disseminate in a timely manner (not in excess of ten business days after the occurrence of the Reportable Event) Reportable Events Disclosure to EMMA in such manner and format and accompanied by identifying information as is prescribed by the MSRB or the Commission at the time of delivery of such information. References to “material” in *Exhibit II* refer to materiality as it is interpreted under the Exchange Act. MSRB Rule G-32 requires all EMMA filings to be in word-searchable PDF format. This requirement extends to all documents to be filed with EMMA, including financial statements and other externally prepared reports. Notwithstanding the foregoing, notice of optional or unscheduled redemption of any Bonds or defeasance of any Bonds need not be given under this Agreement any earlier than the notice (if any) of such redemption or defeasance is given to the Bondholders pursuant to the Indenture.

6. Consequences of Failure of CCCFA to Provide Information. CCCFA shall give notice in a timely manner to EMMA of any failure to provide Annual Financial Information Disclosure when the same is due hereunder.

In the event of a failure of CCCFA to comply with any provision of this Agreement, the beneficial owner of any Bond may seek mandamus or specific performance by court order, to cause CCCFA to comply with its obligations under this Agreement. The beneficial owners of 25% or more in principal amount of the Bonds outstanding may challenge the adequacy of the information provided under this Agreement and seek specific performance by court order to cause CCCFA to provide the information as required by this Agreement. A default under this Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Agreement in the event of any failure of CCCFA to comply with this Agreement shall be an action to compel performance.

7. Amendments; Waiver. Notwithstanding any other provision of this Agreement, CCCFA by resolution authorizing such amendment or waiver, may amend this Agreement, and any provision of this Agreement may be waived, if:

(b) (i) The amendment or waiver is made in connection with a change in circumstances that arises from a change in legal requirements, including without limitation pursuant to a “no-action” letter issued by the Commission, change in law, or change in the identity, nature, or status of CCCFA, or type of business conducted; or

(ii) This Agreement, as amended, or the provision, as waived, would have complied with the requirements of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not materially impair the interests of the beneficial owners of the Bonds, as determined either by parties unaffiliated with CCCFA (such as the Trustee), or by approving vote of Bondholders pursuant to the terms of the Indenture at the time of the amendment.

In the event that the Commission, the MSRB or other regulatory authority shall approve or require Annual Financial Information Disclosure or Reportable Events Disclosure to be made to a central post office, governmental agency or similar entity other than EMMA or in lieu of EMMA, CCCFA shall, if required, make such dissemination to such central post office, governmental agency or similar entity without the necessity of amending this Agreement.

8. Termination of Undertaking. The Undertaking of CCCFA shall be terminated hereunder if CCCFA no longer has any legal liability for any obligation on or relating to repayment of the Bonds under the Indenture. CCCFA shall give notice to EMMA in a timely manner if this Section is applicable.

9. Dissemination Agent. CCCFA may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Agreement, and may discharge any such Dissemination Agent with or without appointing a successor Dissemination Agent.

10. Additional Information. Nothing in this Agreement shall be deemed to prevent CCCFA from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other information in any Annual Financial Information Disclosure or notice of occurrence of a Reportable Event, in addition to that which is required by this Agreement. If CCCFA chooses to include any information from any document or notice of occurrence of a Reportable Event in addition to that which is specifically required by this Agreement, CCCFA shall have no obligation under this Agreement to update such information or include it in any future disclosure or notice of occurrence of a Reportable Event. If the name of CCCFA is changed, CCCFA shall disseminate such information to EMMA.

11. Beneficiaries. This Agreement has been executed in order to assist the Participating Underwriter in complying with the Rule; however, this Agreement shall inure solely to the benefit of CCCFA, the Dissemination Agent, if any, and the beneficial owners of the Bonds, and shall create no rights in any other person or entity.

12. Recordkeeping. CCCFA shall maintain records of all Annual Financial Information Disclosure and Reportable Events Disclosure, including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

13. Assignment. CCCFA shall not transfer its obligations under the Indenture unless the transferee agrees to assume all obligations of CCCFA under this Agreement or to execute an Undertaking under the Rule.

14. Governing Law. This Agreement shall be governed by the laws of the State of California.

CALIFORNIA COMMUNITY CHOICE FINANCING  
AUTHORITY

By  
Its

EXHIBIT I

ANNUAL FINANCIAL INFORMATION AND TIMING AND AUDITED  
FINANCIAL STATEMENTS

“*Annual Financial Information*” means financial information and operating data with respect to Commodity Project No. 1, including:

(b) with respect to the Project Participant updated information under the headings “Customers – General,” “Customers – Largest Customers,” “Customers – Customer Opt-Out Rate and Customer Retention,” “Rates – Current and Historical Rate Information,” “Sources of Energy – Energy Purchases,” “Results of Operations,” and “Assets, Liabilities, Deferred Inflows or Resources and Net Position” set forth APPENDIX A to the Official Statement;

(c) the quantities of Electricity from the Clean Energy Project sold by CCCFA, whether to Project Participant or others; and

(d) such other information and data as CCCFA may deem necessary in order to comply with the requirements of the Rule.

“*Audited Financial Statements*” means the audited financial statements of CCCFA and the Project Participant, in each case for the most recent fiscal year (commencing with the fiscal year ended December 31, [2021] for CCCFA, and commencing with the fiscal year ended June 30, 2022 for the Project Participant), in each case prepared in accordance with generally accepted accounting principles as promulgated to comply with governmental entities from time to time (or such other accounting principles as may be applicable to CCCFA and the Project Participant, as the case may be, in the future pursuant to applicable law).

All or a portion of the Annual Financial Information and the Audited Financial Statements set forth above may be included by reference to other documents which have been submitted to EMMA or filed with the Commission. If the information included by reference is contained in a final official statement, the final official statement must be available on EMMA. The final official statement need not be available from the Commission. CCCFA shall clearly identify each such item of information included by reference.

Annual Financial Information with respect to the Project Participant will be submitted to EMMA by 200 days after end of the Project Participant’s fiscal year.

Annual Financial Information with respect to CCCFA (*i.e.*, the information described in clauses (b) and (c) of the definition of Annual Financial Information) will be submitted to EMMA by 200 days after end of CCCFA’s fiscal year.

Audited Financial Statements as described above should be filed at the same times as the Annual Financial Information for the Project Participant and CCCFA. If Audited Financial Statements are not available when such Annual Financial Information is filed, unaudited financial statements shall be included. Audited Financial Statements will be submitted to EMMA no later than 30 days after availability to CCCFA.

If any change is made to the Annual Financial Information as permitted by Section 4 of the Agreement, CCCFA will disseminate a notice of such change as required by Section 4.

## EXHIBIT II

### EVENTS WITH RESPECT TO THE BONDS FOR WHICH REPORTABLE EVENTS DISCLOSURE IS REQUIRED

1. Principal and interest payment delinquencies
2. Non-payment related defaults, if material
3. Unscheduled draws on debt service reserves reflecting financial difficulties
4. Unscheduled draws on credit enhancements reflecting financial difficulties
5. Substitution of credit or liquidity providers, or their failure to perform
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security
7. Modifications to the rights of security holders, if material
8. Bond calls, if material, and tender offers
9. Defeasances
10. Release, substitution or sale of property securing repayment of the securities, if material
11. Rating changes
12. Bankruptcy, insolvency, receivership or similar event of the obligated person\*
13. The consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material

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\* This event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

15. Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties
17. The receipt by CCCFA of a Monthly Ledger Report that includes a credit to any Non-Private Business Sales Ledger or any Private Business Sales Ledger that has not been reversed within twelve months of the date of such credit
18. The receipt by CCCFA of a Monthly Ledger Report that shows that a Ledger Event has occurred

**APPENDIX F**

**FORM OF OPINION OF BOND COUNSEL**

\_\_\_\_\_, 2022

California Community Choice Financing Authority  
San Rafael, California

California Community Choice Financing Authority  
Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Term Rate),  
Clean Energy Project Revenue Bonds, Series 2022[B]-2 (SIFMA Index Rate), and  
Clean Energy Project Revenue Bonds, Series 2022[B]-3 (SOFR Index Rate)  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to California Community Choice Financing Authority (the “Issuer”) in connection with issuance of \$[B-1 Par] aggregate principal amount of California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022[B]-1 (Term Rate) (the “Series 2022[B]-1 Bonds”), \$[B-2 Par] aggregate principal amount of California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022[B]-2 (SIFMA Index Rate) (the “Series 2022[B]-2 Bonds”), and \$[B-3 Par] aggregate principal amount of California Community Choice Financing Authority Clean Energy Project Revenue Bonds, Series 2022[B]-3 (SOFR Index Rate) (the “Series 2022[B]-3 Bonds” and, together with the Series 2022[B]-1 Bonds and the Series 2022[B]-2 Bonds, the “Bonds”), issued pursuant to a Trust Indenture, dated as of \_\_\_\_\_ 1, 2022 (the “Indenture”), between the Issuer and [\_\_\_\_\_] , as trustee (the “Trustee”). The Indenture provides that the Bonds are issued for the purpose of financing the Cost of Acquisition of the Clean Energy Project. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

In such connection, we have reviewed the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the Commodity Swaps, the Seller Swaps (as defined in the Master Power Supply Agreement), the Tax Certificate, dated the date hereof (the “Tax Certificate”), opinions of counsel to the Issuer and the Trustee, certificates of the Issuer, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after original delivery of the Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after original delivery of the Bonds on the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than the Issuer. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under

the Bonds, the Indenture, the Master Power Supply Agreement, the Clean Energy Purchase Contract, the Commodity Swaps, the Seller Swaps, the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against governmental entities such as the Issuer in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Indenture or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion or conclusion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Bonds constitute the valid and binding limited obligations of the Issuer.
2. The Indenture has been duly executed and delivered by, and constitutes the valid and binding obligation of, the Issuer. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Bonds, of the Trust Estate, subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in the Indenture, including without limitation the pledge of the Commodity Reserve Account and the amounts and investments on deposit therein in favor of the Commodity Swap Counterparties and the Project Participants,[ and the pledge of the Shortfall Termination Account] and the amounts and investments on deposit therein in favor of the Project Participants.
3. Interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. We observe that, for tax years beginning after December 31, 2022, interest on the Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

## APPENDIX G

### BOOK-ENTRY SYSTEM

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity of the Bonds exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount and an additional certificate will be issued with respect to any remaining principal amount of such maturity.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“*Direct Participants*”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“*Indirect Participants*”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com)

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“*Beneficial Owner*”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership.

DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to CCCFA of securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts such Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and payments of principal and interest on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from CCCFA or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, CCCFA or the Trustee, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of CCCFA or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to CCCFA or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

CCCFA may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates are required to be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that CCCFA believes to be reliable, but CCCFA takes no responsibility for the accuracy thereof.

**APPENDIX H**

**REDEMPTION PRICE OF THE BONDS**

The following table sets forth the Redemption Price of the Bonds (being the Amortized Value of the Series 2022[B]-1 Bonds and 100% of the principal amount of the Index Rate Bonds, but excluding accrued interest which is payable from the amounts required to be on deposit in the Debt Service Account) upon an extraordinary mandatory redemption following an Early Termination Payment Date under the Master Power Supply Agreement, as of the redemption dates shown below during the Initial Interest Rate Period.

REDEMPTION DATE	REDEMPTION PRICE		
	FIXED RATE BONDS <sup>(1)</sup>	INDEX RATE BONDS <sup>(2)</sup>	TOTAL

1 Amortized Value of the Series 2022[B]-1 Bonds as of each Redemption Date.

2 100% of the principal amounts of the Series 2022[B]-2 Bonds and Series 2022[B]-3 Bonds as of each Redemption Date.

**APPENDIX I**

**SCHEDULE OF TERMINATION PAYMENTS**

The following table sets forth the Schedule of Termination Payments under the Master Power Supply Agreement as of the specified Early Termination Payment Dates during the Initial Interest Rate Period. The Early Termination Payment Date is the Business Day preceding the date listed below.

<u>MONTH OF EARLY TERMINATION DATE</u>	<u>EARLY TERMINATION PAYMENT DATE*</u>	<u>TERMINATION PAYMENT</u>
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\* If any Early Termination Payment Date is not a Business Day, the Early Termination Payment is due on the preceding Business Day.

**APPENDIX J**  
**[CLIMATE BOND VERIFIER'S REPORT]**

**APPENDIX K**

**[DISCLOSURE RE FUNDING RECIPIENT – IF NOT GSG]**



## Management Report

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Ted Bardacke, Chief Executive Officer  
**Subject:** Management Report  
**Date:** October 6, 2022

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### **Grid Stress Recap**

The 10-day heat wave that gripped the western United States in the beginning of September caused the California electricity grid to experience its two highest peak demand days in history. This high demand combined with a capacity shortage that has evolved over the last several years, had the state narrowly avoiding rotating outages for several days. Unlike the last heat wave of this magnitude in August of 2020, when there were rotating outages due to several infrastructure failures and CAISO market design inhibited California from accessing all available imports, this most recent episode of grid stress was more of a case of available supply barely able to meet demand.<sup>1</sup> Indeed, on the most critical days, rotating outages were avoided by reducing customer demand rather than increasing system supply.

At an organizational level, actions and impacts by and on CPA fall into three categories:

1. Communications and Demand Reduction – CPA was active in communicating with its customers via individual emails and social media about the need to conserve electricity during peak times. Many CPA member agencies used CPA media assets to amplify this conservation message. CPA's Power Response program called Demand Response events for customers who have signed up for that incentive program. And CPA offered tips and incentives to member agencies to reduce municipal electricity usage during peak times.

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<sup>1</sup> With a few exceptions on individual days, all major resources in early September performed well, including transmission infrastructure, solar, wind, battery energy storage and state's fleet of gas-fired power plants.

2. Battery Energy Storage – Since 2020, CPA has brought on-line approximately 400MW of battery energy storage, part of the more than ten-fold increase in the amount of battery energy storage on the California grid in the past two years. Over 200MW of this new capacity – enough to power 150,000 homes in Southern California for four hours – from CPA was brought online in August, just in time to make a difference in early September. Additionally, the battery energy storage helped mitigate the heat wave’s financial impact on CPA. CPA will continue to aggressively pursue battery energy storage projects for both reliability and financial reasons.
3. Financial Impact – It will take several months, after major CAISO invoices and settlements for the month of September have issued, for CPA to determine the overall financial impact of the heat wave’s elevated prices and increased demand on CPA’s first quarter financial results. CPA has sufficient liquidity to meet its cash flow needs.

CPA staff is collecting lessons learned in all three of these areas in preparation for the next couple of years, as the risk of further grid emergencies remains acute. Evidence of this heightened risk can be seen in the 2023 market for Resource Adequacy, where additional supply is difficult to secure regardless of price.

### **Carmen Ramirez Memorial and Scholarship Fund**

A public memorial for former Ventura County Supervisor and CPA Board Member Carmen Ramirez will be held on Saturday October 15 at 3PM in the Stadium at Pacifica High School in Oxnard. Members of the CPA community are invited to attend. In conjunction with the memorial, CPA will be making a donation to the Carmen Ramirez Legacy Scholarship Fund to Support Public Service being administered by the Ventura County Community Foundation.

### **Default Rate Change Update**

Eight CPA member agencies are undergoing complete or partial default rate changes in October. CPA, in collaboration with the affected member agencies, began full-scale outreach customer activity related to the default rate change in September, including mailing notices to each one of the approximately 300,000 potentially affected customers.

As of September 26, 1,311 (0.45%) of these customers had exercised an alternative choice to their default change, split nearly equally between those choosing to opt-down and those choosing to opt-out.

Additionally, in September, the Alhambra City Council voted unanimously to change their default rate to 100% in October of 2023.

### **CPA Expansion Activity**

On September 29, the Hermosa Beach City Council voted unanimously to join Clean Power Alliance and to choose a default rate of 100% Green when CPA begins enrolling their approximately 10,500 customers in 2024. The cities of Monrovia and Santa Paula will consider joining CPA later this month.

### **Monthly Financial Performance**

CPA is in the process of closing its full Fiscal Year 2021/22 financial results and undergoing its annual independent audit. The Finance Committee will receive full year FY 2021/22 financial results and the auditor report in October, followed by the full Board in November. The most recent monthly financial information available is for July 2022, the first month of the new fiscal year. In that month, CPA recorded operating income of \$18.5 million, \$8.5 million more than the budgeted operating income of \$10 million. Revenues were in line with forecast, but power prices were lower than budgeted amounts. The financial dashboard for July 2022 is provided in Attachment 1.

### **Customer Participation Rate and Opt Actions**

As of September 26, 2022, CPA's overall participation rate was 96%, unchanged from the past five months. CPA had a total of 1,001,719 active customers, down 1,034 customers from the previous month. Opt-out levels – 772 accounts through the fourth week of August – are lower than what CPA typically experiences in the third quarter of the year even accounting for the default changes. New accounts (“move-ins”) were higher than closed accounts (“move-outs”) by 2,156 customers in September. Attachment 2 provides participation rates and active accounts by jurisdiction.

**Customer Service Center Performance**

Incoming calls to CPA's Customer Service Center increased in September due to default rate change notifications and higher summer bills. Through September 26, CPA received 3,413 calls, up from 2,971 for the entire month of August. 84% of calls were answered within 45 seconds, down from 97% in August, and average wait time was 31 seconds, up from 8 seconds in August. The higher call volumes coincided with some unexpected call center staffing issues the week of September 19; CPA expects similar high call volume in October and the staffing issues have been addressed.

**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

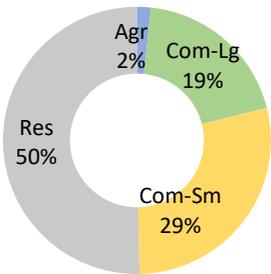
YTD  
July  
2022

Active Accounts  
1,001,956

Participation Rate  
96.07%

YTD Sales Volume  
1,116 GWh

July Sales Volume  
1,116 GWh



## Summary of Financial Results

in \$000,000's	July				Year-to-Date			
	Actual	Budget	Variance	%	Actual	Budget	Variance	%
Energy Revenues	117.7	117.1	0.5	0%	117.7	117.1	0.5	0%
Cost of Energy	96.8	103.9	-7.1	-7%	96.8	103.9	-7.1	-7%
Net Energy Revenue	20.9	13.3	7.6	57%	20.9	13.3	7.6	57%
Operating Expenses	2.4	3.3	-0.9	-26%	2.4	3.3	-0.9	-26%
Operating Income	18.5	10.0	8.5	85%	18.5	10.0	8.5	85%

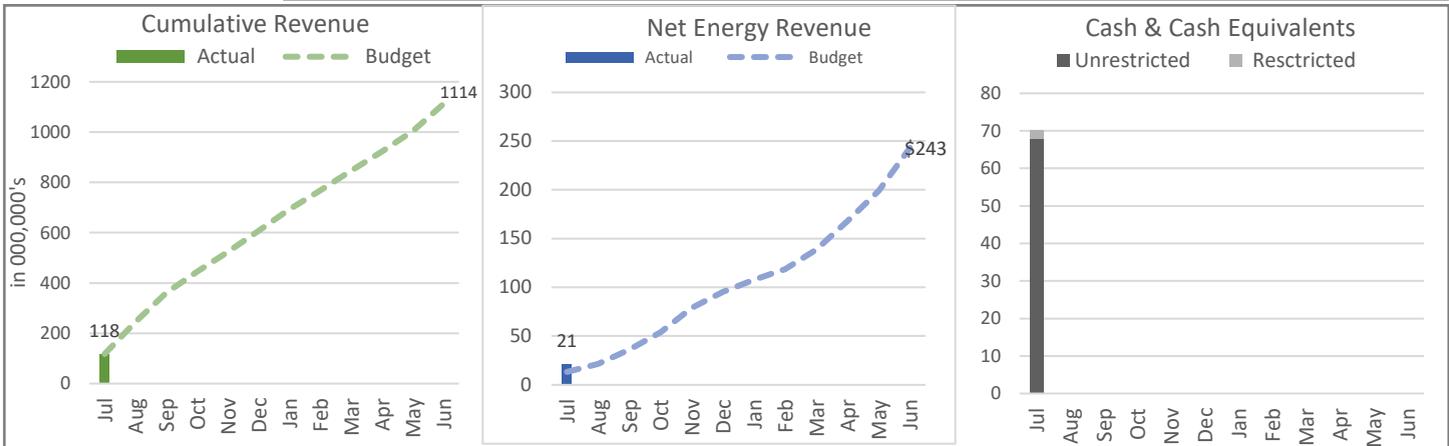
**Note:** Numbers may not sum up due to rounding.

CPA recorded operating income of \$18.5 million in July 2022 which was \$8.5 million more than the budgeted operating income of \$10 million.

July revenue was \$117.7M or \$500k slightly higher than budgeted revenue. The cost of energy was \$96.8M or 7% lower than budgeted mostly as a result of mild weather conditions and lower actual market prices than prices used to estimate budgeted cost of energy. Operating costs were lower than budgeted primarily as a result of lower general administration and other services costs than budgeted and the non-utilization of contingencies.

As of July 31, 2022, CPA had \$67.8 million in unrestricted cash and cash equivalents, and \$79.853 million available on its bank line of credit.

CPA is in sound financial health and in 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, 2022

## Participation by City and County

Jurisdiction	Default Option	Active Accounts	Participation Rate	Lean %	Clean %	100% Green %
Agoura Hills	100% Green	8,095	93.53%	1.99%	0.38%	97.63%
Alhambra	Clean	33,965	98.24%	1.48%	98.00%	0.52%
Arcadia	Lean	22,476	98.18%	99.78%	0.09%	0.13%
Beverly Hills	Clean	18,664	99.81%	1.66%	98.18%	0.16%
Calabasas	100% Green	9,728	97.61%	1.71%	0.29%	98.01%
Camarillo	Lean	28,393	95.97%	99.11%	0.30%	0.60%
Carson	Clean	29,204	97.67%	1.29%	97.40%	1.31%
Claremont	Clean	12,595	95.09%	2.44%	96.72%	0.84%
Culver City	100% Green	19,192	98.04%	3.97%	1.10%	94.94%
Downey	Clean	36,712	97.71%	1.52%	98.01%	0.47%
Hawaiian Gardens	Clean	3,626	96.82%	1.13%	97.55%	1.32%
Hawthorne	Lean	28,455	99.49%	98.27%	0.49%	1.24%
Los Angeles County	Clean	297,752	95.95%	1.79%	97.18%	1.03%
Malibu	100% Green	6,959	97.74%	2.90%	0.43%	96.67%
Manhattan Beach	100% Green	15,438	98.34%	2.58%	0.19%	97.22%
Moorpark	Clean	11,434	90.32%	3.08%	96.35%	0.57%
Ojai	100% Green	3,494	93.12%	5.98%	1.26%	92.76%
Oxnard	100% Green	55,588	96.14%	3.98%	0.55%	95.46%
Paramount	Lean	15,604	98.85%	96.89%	1.24%	1.86%
Redondo Beach	Clean	33,232	99.31%	1.94%	97.63%	0.42%
Rolling Hills Estates	100% Green	3,451	94.21%	7.07%	14.66%	78.27%
Santa Monica	100% Green	54,059	99.58%	3.51%	0.70%	95.79%
Sierra Madre	100% Green	4,958	94.49%	5.41%	1.59%	93.00%
Simi Valley	Lean	43,224	93.59%	99.65%	0.12%	0.23%
South Pasadena	100% Green	11,625	98.39%	3.72%	10.86%	85.42%
Temple City	Lean	12,548	97.54%	99.78%	0.05%	0.17%
Thousand Oaks	100% Green	44,130	89.88%	8.08%	1.64%	90.29%
Ventura	100% Green	43,706	94.93%	4.81%	1.31%	93.89%
Ventura County	100% Green	32,257	86.53%	6.51%	1.22%	92.27%
West Hollywood	100% Green	26,466	97.55%	2.39%	0.37%	97.24%
Westlake Village	Lean	3,713	88.59%	99.57%	0.05%	0.38%
Whittier	Clean	30,976	95.95%	1.85%	97.72%	0.44%
<b>Total</b>		<b>1,001,719</b>	<b>95.91%</b>			

## Overall Participation by Default Option

Default Option	Participation Rate	Default Option	Active Accounts	% of Active
100% Green	95.34%	100% Green	339,146	33.86%
Clean	96.69%	Clean	508,160	50.73%
Lean	96.03%	Lean	154,413	15.41%
<b>Total</b>	<b>95.91%</b>	<b>Total</b>	<b>1,001,719</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>					
<b>Vendor</b>	<b>Purpose</b>	<b>Month</b>	<b>NTE Amount</b>	<b>Status</b>	<b>Notes</b>
<b>Mercer</b>	<b>Compensation and benefits study refresh</b>	<b>September 2022</b>	<b>\$75,000</b>	<b>Active</b>	
<b>Pickit</b>	<b>Digital asset library</b>	<b>September 2022</b>	<b>\$2,900</b>	<b>Active</b>	
<b>Salesforce</b>	<b>Stakeholder Relationship Management application subscription</b>	<b>August 2022</b>	<b>\$15,300</b>	<b>Active</b>	
<b>Elite Edge Consulting</b>	<b>Accounting services</b>	<b>August 2022</b>	<b>\$90,000</b>	<b>Active</b>	<b>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 Amendment #3 - Second (final) renewal authorized; extends through 6/30/2022</b>
<b>Oscar Associates</b>	<b>Recruiting Services</b>	<b>August 2022</b>	<b>N/A</b>	<b>Active</b>	<b>Amendment to reduce placement fees to 25% of starting salary of exclusively referred candidate</b>
<b>Helpmates</b>	<b>Temporary staffing services</b>	<b>July 2022</b>	<b>N/A</b>	<b>Active</b>	
<b>Baker Tilly</b>	<b>Financial audit services</b>	<b>June 2022</b>	<b>\$50,000</b>	<b>Active</b>	
<b>IHS Market</b>	<b>Subscription for CAISO forecasts</b>	<b>June 2022</b>	<b>\$15,000</b>	<b>Active</b>	
<b>MBI</b>	<b>Marketing contract renewal</b>	<b>June 2022</b>	<b>\$7,687</b>	<b>Active</b>	<b>3% increase to Board approved NTE upon renewal</b>
<b>Fraser</b>	<b>Marketing contract renewal</b>	<b>June 2022</b>	<b>\$55,647</b>	<b>Active</b>	<b>9% increase to Board approved NTE upon renewal</b>
John Kotch	IT Consulting	June 2022	\$3,000	Completed	
<b>AiQueous</b>	<b>Salesforce implementation</b>	<b>June 2022</b>	<b>\$10,000</b>	<b>Active</b>	
<b>Place and Page</b>	<b>Graphic design and branding</b>	<b>June 2022</b>	<b>\$50,000</b>	<b>Active</b>	
<b>Informal Development</b>	<b>Website development</b>	<b>May 2022</b>	<b>\$50,000</b>	<b>Active</b>	
<b>Lattice</b>	<b>Performance management software</b>	<b>April 2022</b>	<b>\$9,000</b>	<b>Active</b>	
Active San Gabriel Valley	Grant for community-based outreach	April 2022	\$8,000	Completed	
MERITO	Grant for community-based outreach	April 2022	\$8,000	Completed	
<b>Davis Wright Tremaine</b>	<b>Legal services (regulatory)</b>	<b>March 2022</b>	<b>\$125,000</b>	<b>Active</b>	
<b>LinkedIn</b>	<b>Subscription for recruiting tools</b>	<b>March 2022</b>	<b>\$34,306</b>	<b>Active</b>	
<b>MCM</b>	<b>Municipal advisory services</b>	<b>March 2022</b>	<b>\$125,000</b>	<b>Active</b>	
<b>Pinnacle</b>	<b>AV maintenance/service plan</b>	<b>March 2022</b>	<b>\$25,273</b>	<b>Active</b>	
Gridwell	Resource adequacy training	February 2022	\$2,000	Completed	
<b>Abbot, Stringham and Lynch</b>	<b>IT compliance reporting for CPUC</b>	<b>February 2022</b>	<b>\$8,500</b>	<b>Active</b>	
California Science Center	Event space rental for Staff Retreat	February 2022	\$6,440	Completed	
Orange Grove Consulting	DEI implementation planning services	February 2022	\$105,750	Completed	
<b>Zoe Misquez</b>	<b>Filing lobbying compliance forms</b>	<b>January 2022</b>	<b>\$500</b>	<b>Active</b>	
<b>Critical Mention, Inc.</b>	<b>Media monitoring service</b>	<b>January 2022</b>	<b>\$6,000</b>	<b>Active</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>					
<b>Vendor</b>	<b>Purpose</b>	<b>Month</b>	<b>NTE Amount</b>	<b>Status</b>	<b>Notes</b>
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	Completed	
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
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)
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)
CV Resources	Recruiting Services	September 2021	N/A	Active	20% of starting salary upon hiring an exclusively referred candidate

<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>					
<b>Vendor</b>	<b>Purpose</b>	<b>Month</b>	<b>NTE Amount</b>	<b>Status</b>	<b>Notes</b>
Abbot, Stringham and Lynch	2020 CEC Power Source Disclosure Audit	August 2021	\$16,700	Active	Includes two optional renewals for years 2021 and 2022
Bradsby Group	Recruiting Services	August 2021	N/A	Active	25% of starting salary upon hiring an exclusively referred candidate
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
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	
Snowflake Inc.	Cloud-Native Elastic Data Warehouse Service	April 2020	\$ 36,000	Active	



## 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