REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, December 1, 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.

Visit CPA’s YouTube Channel to view a Live Stream of the Meeting
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 Participate in 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 up to four hours before the meeting. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.

- Provide Public Comment During the Meeting: Please notify staff via email at clerk@cleanpoweralliance.org at the beginning of the meeting but no later than immediately before the agenda item is called.
  o 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.
  o 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.
  o 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.
  o Once you have spoken, or the allotted time has run out, you will be muted during the meeting.

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

While downloading the Zoom application may provide a better meeting experience, Zoom does not need to be installed on your computer to participate. After clicking the webinar link above, click “start from your browser.”
Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least two (2) working days before the meeting at clerk@cleanpoweralliance.org or (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.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

GENERAL PUBLIC COMMENT

CONSENT AGENDA
1. Adopt Resolution 22-12-043 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)
2. Approve Minutes from November 3, 2022, Board of Directors Meeting
3. Approve a Professional Services Agreement between CPA and MRW and Associates LLC with a Not-to-Exceed (NTE) amount of $60,000
4. Receive and File Quarter 3 Risk Management Team Report
5. Receive and File Fiscal Year Quarter 1 Financial Results
6. Receive and File Quarterly Communications Report (August – October 2022)
7. Receive and File 2023 Meeting Schedule
8. Receive and File Community Advisory Committee Monthly Report
REGULAR AGENDA

Public Hearing

9. Adopt Resolution 22-12-044 to Approve Addendum No. 4 to CPA’s Implementation Plan, Adding the Cities of Hermosa Beach, Monrovia, and Santa Paula as Members of Clean Power Alliance, and Authorize Staff to Submit Addendum No. 4 as Attached, or in a Substantially Similar Form, to the California Public Utilities Commission on or Before December 31, 2022

Action Items

10. Approve Three Long-Term Renewable Power Purchase Agreements and Authorize the Chief Executive Officer to Execute the Agreements:
   a. 16-Year Second Amended and Restated PPA for 233 MW of Solar and 132 MW of Storage with Arlington Energy Center II, LLC
   b. 20-Year PPA for 18 MW of Incremental Geothermal Resource with Geysers Power Company, LLC (Revised)
   c. 10.5-Year PPA for 100 MW of Existing Geothermal Resource with Geysers Power Company, LLC (Revised)

11. Approve Two Renewable Power Purchase Agreements (PPA’s) with Pivot Energy and One Amendment to the PPA with Radiant BMT, LLC for Local Resources to Serve the Power Share Program and Authorize the Chief Executive Officer to Execute the Agreements

12. CPA Salary Grades, Development of Retention Incentives, Contract Amendments for Chief Executive Officer and General Counsel, Employee Handbook Updates and Revisions
   a. Adopt Salary Grades for CPA Employees
   b. Direct Staff to Develop Options for a Retention Incentive Program for Board Consideration in 2023
   c. Approve and Authorize the Board Chair to Execute the Amended and Restated Employment Agreement with the Chief Executive Officer at a base annual salary of $450,000
   d. Approve and Authorize the Board Chair to Execute the Amended and Restated Employment Agreement with the General Counsel at a base annual salary of $413,919
   e. Adopt Resolution 22-12-045 Modifying CPA’s Employee Handbook
MANAGEMENT REPORT

COMMITTEE CHAIR UPDATES
Director Deborah Klein Lopez, Chair, Legislative & Regulatory Committee
Director Susan Santangelo, Chair, Finance Committee
Director Robert Parkhurst, Chair, Energy Planning & Resources Committee

BOARD MEMBER COMMENTS AND OUTGOING BOARD MEMBER RECOGNITION

REPORT FROM THE CHAIR

ADJOURN – DARK IN JANUARY 2023. NEXT REGULAR MEETING ON FEBRUARY 2, 2023

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
To: Clean Power Alliance (CPA) Board of Directors

From: Nancy Whang, General Counsel
Gabriel Monzon, Clerk of the Board

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Adopt Resolution 22-12-043 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)

Date: December 1, 2022

RECOMMENDATION
Adopt Resolution No. 22-12-043 finding the continuing need to meet by teleconference pursuant to Government Code Section 54953(e).

BACKGROUND/DISCUSSION
On September 20, 2021, Governor Newsom signed AB 361 which allowed meetings to be held under modified teleconferencing rules if, during a proclaimed State of Emergency, the local agency finds by resolution that meeting in person would present imminent risks to the health or safety of attendees or if state or local officials have imposed or recommended measures to promote social distancing. Any such resolution is effective only for 30 days.

CPA In-Person Meetings in 2023
The State of Emergency declared by Gov. Newsom in 2020 allowed CPA to continue to meet under AB 361’s modified teleconferencing rules. However, on October 17, 2022, Gov. Newsom announced his intent to end the State of Emergency on February 28, 2023, which means that AB 361’s modified teleconferencing rules will no longer be authorized after that date.

Resolution 22-12-043 will expire on December 31, 2022. Accordingly, starting in January 2023, CPA will return to in-person meetings and will use the Brown Act teleconference
requirements beginning with the January Executive Committee and Standing Committee meetings.¹

For Committee meetings, CPA can accommodate remote participation from any publicly accessible location where an agenda can be posted. For Board meetings, CPA will have a central location at its offices in Downtown Los Angeles, and four (4) remote locations in Torrance (South Bay COG offices), Whittier (City Hall), Calabasas (City Hall), and the City of Ventura (Ventura County Government Center).

**ATTACHMENT**

1. Resolution No. 22-12-043 finding the continuing need to meet by teleconference

¹ There is no Board meeting scheduled in January 2023.
RESOLUTION NO. 22-12-043

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, November 3, 2022, 2:00 p.m.

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

Meeting videos are available on CPA's YouTube Channel. www.youtube.com@CPApublicmeetings

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.

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All votes are unanimous unless otherwise stated.

PLEDGE OF ALLEGIANCE
Vice Chair Sheila Kuehl led the pledge of allegiance.

GENERAL PUBLIC COMMENT
There was no public comment.

CONSENT AGENDA
1. Adopt Resolution 22-10-042 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953 (e)
2. Approve Minutes from October 6, 2022, Board of Directors Meeting
3. Approve Amended and Restated Joint Powers Agreement and Authorize the Chair of the Board of Directors to Execute the Agreement as Presented
4. Receive and File Community Advisory Committee Monthly Report

Motion: Director Mahmud, South Pasadena
Second: Director Calaycay, Claremont
Vote: The consent agenda was approved by a roll call vote.

REGULAR AGENDA
Action Items

5. Initial Review of the 2023 Power Charge Indifference Adjustment (PCIA) and SCE Generation Rate Levels
Matt Langer, Chief Operating Officer, provided a presentation on the 2023 PCIA and Southern California Edison’s (SCE) forecasted generation rates. CPA staff conducted an initial analysis of the impact on customer bills and the expected bill comparison based on the 2023 PCIA and SCE generation rates, which still need approval by the California Public Utilities Commission (CPUC). Mr. Langer reviewed the PCIA impacts, noting that the proposed 2023 PCIA will be negative, providing customers with a PCIA line-item credit of approximately ½ cent per kilowatt hour, and CPA customers will see bill reductions of about 2% in January 2023. SCE’s generation rates are forecast to increase by about 23% in 2023 which, combined with the decreased PCIA, will put all CPA rates (except streetlighting) below SCE rates.

In response to Director Perello’s question about undercollection, Mr. Langer specified that SCE sets its rates based on a forecast to cover costs; last year, SCE rates were too low and they did not collect enough money and will need to bill their customers the following year to cover the financial loss. In response to Director Parkhurst’s questions concerning the energy price forecast, Mr. Langer indicated that CPA sets their rates in time to adjust for high energy price periods and that CPA does not use benchmarks, but rather looks at forward prices across different time periods whereas SCE takes the average of market forward prices over a period of time and determines their rates. Director Torres inquired about the streetlighting rates, and Mr. Langer advised they will be 9-10% higher than SCE’s streetlighting rates in 2023. Director Stern asked if CPA’s streetlight rates were historically higher than SCE’s, and Mr. Langer confirmed that, and added that CPA’s streetlight rates are cost-based, whereas SCE’s subsidized streetlighting rates are partly based on settlements with cities, but the Board has decided not to use subsidized rates. Director Mahmud observed that CPA’s rates in FY 20/21 increased dramatically in comparison to SCE’s rates, due in part to SCE’s underestimation of energy costs during their rate-setting process. Director Mahmud asked what the exact amount of the increase was. Mr. Langer noted that on a rate comparison basis, most of CPA’s customers were at a 4-7% premium to SCE in 2021. Director Mahmud added that CPA’s rate-setting process and cautious forecasting placed the agency in a good position the following year. In response to Chair Gold’s clarifying question about SCE’s undercollection, Mr. Langer shared that SCE customers were paying back the 2021 undercollection of $700 million in 2022 and will be paying the 2022 undercollection of $850 million in 2023; the rate increment is attributable to a combination of the undercollection, the forward higher price of energy, and the significantly lower PCIA. Chair Gold noted that the undercollection alone would not have caused such a dramatic rate increase and Mr. Langer agreed, noting that if SCE’s rates would have reflected the new higher energy prices, they would not have had an undercollection once again.

6. Presentation on Fiscal Year 2021/2022 Financial Statements and Budget to Actual Report
David McNeil, Chief Financial Officer, announced that CPA received a clean audit opinion as a result of the independent audit; provided a presentation on the FY 2021-22 financial results. Mr. McNeil noted that CPA recorded strong financial results in FY 2021-22 and is in sound financial health. Mr. McNeil reviewed CPA’s balance sheet components and income statement, adding that the majority of
CPA’s assets continue to be cash and accounts receivable. Mr. McNeil shared select financial indicators and summarized the budget to actual analysis, highlighting that CPA was within the budget for all budget line items. The exceedances in the interest and finance expenses and the amortization expense, resulting from new lease accounting standards, are offset by a reduction in occupancy costs. For FY 2021-22, CPA increased its net position by $67 million (90%), increased days liquidity on hand from 44 to 61 days (39%) and paid its loan to L.A. County. Mr. McNeil also noted that operating expenses were 15% under budget, including staff costs, which were 12% under budget. Director Santangelo commented that the Finance Committee is very pleased with the clean audit and current financial standing, and the Committee had the opportunity to have an honest discussion with the auditors without staff present.

Director Parkhurst congratulated staff on a clean audit and inquired about the impacts on an investment credit grade rating. Mr. McNeil advised that CPA still needs to increase its liquidity on hand significantly to become an investment grade entity; CPA took steps to do that in the most recent rate setting process and staff has initiated discussions with Standard & Poor’s about obtaining an investment grade credit rating. Director Mahmud congratulated staff and asked several questions on the increase in capital assets, the California Independent System Operator (CAISO) collateral, and budgeted funds for customer programs. Staff clarified that the increase in capital assets relates to leasehold improvements primarily on office and computer equipment. Regarding collateral, the methodology for collateral posting requirements is the same for all CAISO participants, but the amount differs among the entities due to different factors, including credit limits and gaps between CAISO charges and credits. Lastly, staff indicated budgeted funds for customer programs were overestimated to ensure the funds were available and authorized if needed.

MANAGEMENT REPORT
Mr. Bardacke highlighted the list of awardees of Calpine grants in CPA’s territory. Beginning in January 2023, events will be held twice a year with city managers to foster interest in additional programs, advance local sustainability objectives, and help city leadership obtain a better understanding of CPA’s role. Regarding expansion, Hermosa Beach, Santa Paula, and, most recently, the city of Monrovia voted unanimously to join CPA. Mr. Bardacke thanked Karen Schmidt, Director, Rates & Strategy, for all her hard work and Directors Parkhurst and Mahmud for their support in the city of Monrovia. Mr. Bardacke shared that, although CPA is ahead of the budget for July and August, September’s heat event will most likely have an equalizing effect. Lastly, Mr. Bardacke noted that in June 2020, the Board approved a $4.25 million settlement between CPA and SCE in favor of CPA because of poor data and under unenrollment of customers by SCE. According to the settlement, SCE agreed to ask the California Public Utilities Commission (CPUC) to give CPA a list of all eligible customers in CPA territory (all-territory list); the CPUC has granted permission and CPA has started to receive that all-territory list. Approximately 5,000 accounts, mostly commercial, have been identified as actively being served by SCE, but never had the opportunity to opt-out of service by CPA. CPA will begin working with SCE on an enrollment plan with individualized outreach. Mr. Bardacke noted that this will impact the calculation of CPA’s participation rates by reducing them by a few percentage points.
Director Mahmud inquired whether there were other Community Choice Aggregations (CCAs) party to the settlement, and Mr. Bardacke indicated there are no other parties but other CCAs will now receive the all-territory list as a result of the CPUC ruling initiated by CPA; staff will ascertain if other CCAs are finding the same outcome with their all-territory lists. Responding to Director Mahmud’s question regarding enrollment omittance, Mr. Bardacke noted that staff will receive the all-territory list on a weekly basis and will monitor it effectively.

COMMITTEE CHAIR UPDATES
Director Lindsey Horvath, Chair of Legislative & Regulatory Committee, advised the Board Committee is working to build relationships with existing and newly elected leadership in Sacramento; and announced that this will be her last meeting on the CPA Board and thanked the Board for their hard work and leadership.

Director Susan Santangelo, Chair of Finance Committee, thanked Mr. McNeil and staff for their work.

Director Robert Parkhurst, Chair of Energy Planning & Resources Committee, advised the Board about two community solar projects in Pico Rivera; announced the launch of an RFO in December for Power Share projects; and announced that CPA’s Integrated Resources Plan (IRP) was recently filed. CPA is on track to have over 70% renewables in its portfolio in 2023, while SCE is at 34%; CPA’s IRP target is to hit 100% renewables by 2030, which is 15 years ahead of SB 100 requirements.

BOARD MEMBER COMMENTS
Director Monteiro thanked Director Horvath for her work in helping the City of Hawthorne achieve 100% Green. Vice Chair Kuehl thanked the Board Members for the collaborative way that the cities and counties have worked together, thanked Mr. Bardacke and Director Mahmud, and applauded Director Horvath’s work to bring important issues to the attention of legislators. Director Lee referenced roundtable infrastructure discussions; encouraged Board Members to advocate for projects that can directly benefit CPA’s member agencies in the upcoming round of infrastructure funding. Director Mahmud thanked Director Horvath for her participation and impact on CPA. Director Perello echoed comments of appreciation for Director Horvath and welcomed the City of Santa Paula.

REPORT FROM THE CHAIR
Chair Gold opined that if reliable delivery of electricity from SCE continues to be problematic, the Board should discuss what, if anything, CPA’s member agencies can do to demand reliable delivery of electricity. Chair Gold advised that former Mayor Villaraigosa is seeking ideas for spending on large regional projects, perhaps including grid resilience, infrastructure, and the use of recycling water. Chair Gold also offered words of support to those up for reelection.

ADJOURN
Chair Gold adjourned the meeting at 3:26 p.m.
Staff Report – Agenda Item 3

To: Clean Power Alliance (CPA) Board of Directors
From: Karen Schmidt, Director, Rates and Strategy
Approved by: Ted Bardacke, Chief Executive Officer
Subject: MRW 2023 Rate Setting Professional Services Agreement
Date: December 1, 2022

RECOMMENDATION
Approve the Professional Services Agreement (2023 Agreement) between CPA and MRW and Associates LLC (MRW) with a Not-to-Exceed (NTE) amount of $60,000.

BACKGROUND
Rate setting is a complex, technical, and nuanced effort CPA undertakes each year. MRW has been CPA’s rates consultant since 2018 and has successfully helped CPA through the last four years of rate setting. MRW’s rate tools are specially designed for CPA and integrated with CPA’s processes, and MRW has deep knowledge of CPA’s rate design. MRW’s unique experience with CPA makes them specially qualified to provide guidance to CPA staff as rate setting activities are transitioned in-house over the course of the 2023 rate setting process.

CPA entered into a Services Agreement with MRW for 2022 rate setting services on March 3, 2022 with an NTE of $80,000 (2022 Agreement). Because the combined NTE of the 2022 Agreement and the 2023 Agreement would exceed the Chief Executive Officer’s signing authority of $125,000 within a 12-month period, staff is seeking Board approval of the 2023 Agreement.
SCOPE OF WORK

The 2023 agreement includes six tasks. Task 1 includes training CPA’s recently hired Senior Advisor, Rates and Tariffs on the use of CPA rate models and tools and providing CPA with a complete set of rate setting tools, data sources, and documentation. Tasks 2-5 include advising CPA staff on 2023 rate design and rate scenarios and reviewing 2023 rates and joint rate comparisons for quality assurance and control. Task 6 includes other as-needed consulting services.

FISCAL IMPACT

The proposed contract costs are included in the Board-approved FY 2022-2023 budget.

ATTACHMENT

1. MRW 2023 Rate Setting Professional Services Agreement
This Professional Services Agreement (this “Agreement”), dated and effective as of December 2, 2022 (the “Effective Date”), is made by and between:

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

MRW & ASSOCIATES LLC (“Contractor”).

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

RECOLALS

WHEREAS, CPA may contract with a provider to support CPA’s 2023 ratemaking process;

WHEREAS, CPA selected Contractor because Contractor has the specialized expertise and experience to provide services related to CPA’s rate setting calculations and implementation, including the development of the Joint Rate Comparison for CPA, and offers CPA the Best Value;

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

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

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

AGREEMENT

1. Definitions

a. The definition of “Confidential Information” is set forth in paragraph 10.b. of this Agreement.

b. “CPA Data” shall mean all data gathered or created by Contractor in the performance of the Services pursuant to this Agreement, including any customer or customer-related data.

c. “CPA Information” shall mean all confidential, proprietary, or sensitive information provided by CPA to Contractor in connection with this Agreement.

d. “CPA Materials” shall mean all finished or unfinished content, writing and design of materials but not limited to messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared...
by Contractor, its officers, employees and agents for CPA for the performance of, the purpose of, or in the course of implementing this Agreement.

e. “CPA Product” includes collectively CPA Data, CPA Information, and CPA Materials.

f. “Services” shall mean the scope of work Contractor provides to CPA as specified in Exhibit A.

2. Exhibits and Attachments

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

Exhibit A – Scope of Work
Exhibit B – Reserved
Exhibit C – Compensation
Exhibit D – Reserved

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

3. Services to be Performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit C, Contractor shall perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and Exhibit A (“Services”).

4. Compensation

CPA agrees to compensate Contractor as specified in Exhibit C:

a. In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibit A, CPA shall make payment to Contractor on a time and materials basis and in the manner specified in Exhibit C.

b. Unless otherwise indicated in Exhibit C, Contractor shall invoice CPA monthly to accountspayable@cleanpoweralliance.org for all compensation related to Services performed during the previous month. Payments shall be due within fifteen (15) calendar days after the date the invoice is submitted to CPA at the specified email address. All payments must be made in U.S. dollars.

5. Term

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be one (1) year from the Effective Date (“Initial Term”).
6. **Termination**

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

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

   b. **Termination for Default.** If Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or law which applies to its performance herein and such default continues uncured for thirty (30) calendar days after written notice is given to Contractor, CPA may terminate this Agreement by giving five (5) business days' written notice. If Contractor requires more than thirty (30) calendar days to cure, then CPA may, at its sole discretion, authorize additional time as may reasonably be required to effect such cure provided that Contractor diligently and continuously pursues such cure.

   c. **Termination for Lack of Third-Party Funding.** CPA may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

   d. **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, cease providing the Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except any equitable adjustment pursuant to Paragraph 5(a); (iii) promptly transfer title and deliver to CPA all CPA Product or any work in progress pursuant to this Agreement; and (iv) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession as well as any other materials or information of the other Party in its possession.

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

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

8. Payments of Permits/Licenses

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

9. No Recourse against Constituent Members

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

10. Confidential Information

a. Duty to Maintain Confidentiality. Contractor agrees that Contractor will hold all Confidential Information in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any Confidential Information unless necessary to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable in which case, any disclosure shall be subject to this paragraph, 10.c., and 10.d., below.

b. Definition of “Confidential Information.” The following constitutes “Confidential Information,” whether oral or written: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information, in whatever form, that CPA shares with Contractor in the course and scope of this Agreement, or (c) information that either Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other.

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

c. **California Public Records Act.** The Parties acknowledge and agree that the Agreement including but not limited to any communication or information exchanged between the Parties, any deliverable, or work product are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

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

11. **Insurance**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CPA within 10 business days after the Agreement is fully executed. The general liability policy shall be endorsed naming Clean Power Alliance of Southern California and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work and maintained throughout the Term and any Renewal Term. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor’s obligation under paragraph 6 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor’s negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the
Contractor of any negligence claim.

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

a. General Liability

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

b. Auto Liability

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

c. Workers' Compensation

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

d. Professional Liability Insurance

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than $1,000,000.00 per incident. If the deductible or self-insured retention amount exceeds $100,000.00, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor's general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

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

13. Independent Contractor
a. Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of CPA for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.

b. Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this Agreement. Contractor agrees to provide CPA with copies of any registrations or filings made in connection with the work to be performed under this Agreement.

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

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

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

17. **Notices**

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

In the case of CPA, to:

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

In the case of Contractor, to:

Name/Title: Mark Fulmer, President  
Address: 1736 Franklin Street, 7th Floor  
Oakland, CA 94612  
Telephone: (510) 834-1999 x240  
Email: mef@mrwassoc.com

18. **Assignment**

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

19. **Subcontracting**

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

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

21. Conflict of Interest

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

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

22. Publicity

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

23. Governing Law, Jurisdiction, and Venue

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

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

25. Severability

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

26. Complete Agreement

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

27. Counterparts

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

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

MRW & Associates LLC Clean Power Alliance of Southern California

____________________________________  ______________________________________
By: Mark Fulmer By: Theodore Bardacke
Title: President Title: Chief Executive Officer
Exhibit A – Scope of Work

PROJECT TASKS AND DELIVERABLES

Contractor shall support CPA’s 2023 ratemaking, as specified by CPA and at CPA’s discretion, by training and supporting CPA staff in conducting the rate setting process using tools and processes developed in previous CPA ratemakings.

Contractor must complete the tasks set forth below:

Task #1: CPA Staff Training
   a. Contractor shall meet with CPA staff on a weekly basis to review and explain rate setting tools and processes, on a schedule to be mutually agreed upon by Contractor and CPA.
   b. Contractor shall provide CPA staff with a complete set of rate setting tools, data sources, and documentation, including a finalized 2022 edition of the CPA Rates Handbook.

Deliverables for Task #1: Handoff of rate setting tools, data and Rates Handbook to CPA staff.

Task #2: Rate Scenario Calculations
   a. Contractor shall provide guidance and support to CPA staff to prepare sets of detailed CPA rates reflecting different rate setting scenarios upon CPA request, and to provide the rates to CPA’s revenue forecaster to assess the financial impact to CPA of different rate setting approaches.
   b. Contractor shall review rate scenario calculations to ensure accuracy and quality control.

Deliverables for Task #2: Rate scenario calculations reviewed for accuracy and completeness as set forth above.

Task #3: 2023 Rate Setting Implementation

Contractor shall provide guidance and support to CPA staff to prepare final detailed rates for implementation, in the format directed by CPA’s data manager, once CPA has decided on a rate setting approach. The detailed rates shall include separate rate summary tables for review by CPA’s Board, rate summaries for posting to CPA’s website, and a rate spreadsheet for implementation by CPA’s billing system.

Deliverables for Task #3: Final 2023 rates reviewed for accuracy and completeness, including but not limited to rate summary tables for review by CPA’s Board, rate summaries for posting to CPA’s website, and a rate spreadsheet for implementation by CPA’s billing system.
Task #4: Joint Rate Comparison ("JRC") Updates

Contractor will provide guidance and support to CPA staff to produce JRCs both for mailing and posting to CPA’s website for its new rates, and for any Southern California Edison ("SCE") rate changes in 2023. Contractor shall train CPA staff on the use and maintenance of the spreadsheet tool developed for this purpose.

**Deliverables for Task #4:** Final JRCs for mailing and posting to CPA’s website reviewed for accuracy and completeness, as set forth above, and handoff of JRC tool to CPA staff.

Task #5: Historical Rate Comparisons

Contractor shall train CPA staff in the use and maintenance of the tool developed to automate preparation of reports that analyze CPA and SCE rate trends historically.

**Deliverables for Task #5:** Historical rate comparison tool handed off to CPA staff.

Task #6: As- Needed Consulting

a. Contractor shall provide as-needed consulting services for matters related to rates, but outside of the specific scope of work identified in Tasks 1-5.

b. The parties shall agree in advance when a request falls under Task 6.

**Deliverable for Task #6:** Completion of additional consulting services as set forth above.

**SCHEDULE AND COORDINATION**

Tasks 1-5 listed above will be undertaken in close coordination with CPA staff. Contractor will discuss initial findings and approaches assist in addressing any identified issues before work products or deliverables are finalized. CPA staff will provide timely direction, feedback, and input in developing the work product.

Existing timelines for CPA and SCE rate setting drive the schedule for the Scope of Work. The key events for CPA’s 2023 Rate Setting Process are listed below. Note: rows shaded in grey are milestones that inform the schedule, but do not indicate Scope of Work due dates. Dates are subject to change based on when SCE publishes rates and timing of CPA Board process.

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 2022</td>
<td>Complete training and handoff of rate setting tools (Task 1)</td>
</tr>
<tr>
<td>April 2023</td>
<td>Complete review of rate scenario analysis (Task 2)</td>
</tr>
<tr>
<td>May 4, 2023</td>
<td>CPA’s Board of Directors adopts direction on 2023 rate setting approach</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>May 2023</td>
<td>Complete review of final detailed rate scenario calculations (Task 3)</td>
</tr>
<tr>
<td>May 2023</td>
<td>Handoff of JRC and rate comparison tools (Tasks 4 and 5)</td>
</tr>
<tr>
<td>June 1, 2023</td>
<td>CPA's Board of Directors adopts 2023 rates for implementation</td>
</tr>
</tbody>
</table>
Exhibit B – Intentionally Left Blank
Exhibit C – Compensation

Contractor shall satisfactorily provide all the contemplated Services detailed in Exhibit A at the following hourly rates specified in the table below and in compliance with the terms and conditions of this Agreement.

<table>
<thead>
<tr>
<th>Name</th>
<th>Company/Subcontractor</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark Fulmer</td>
<td>MRW &amp; Associates, LLC</td>
<td>$350</td>
</tr>
<tr>
<td>Mary Neal</td>
<td>MRW &amp; Associates, LLC</td>
<td>$320</td>
</tr>
<tr>
<td>Benjamin Kern</td>
<td>MRW &amp; Associates, LLC</td>
<td>$160</td>
</tr>
</tbody>
</table>

Any travel, administrative expenses, and materials (hereinafter, “Expenses”) will be billed in the amount incurred by Contractor for actual out-of-pocket cost, without any additional mark-up by Contractor. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Expense reports detailing all Expenses, along with receipts, shall be presented to CPA for reimbursement. All expenses must be approved by CPA in advance writing before they are incurred.

The Total Maximum Amount that CPA shall pay Contractor, including any subcontractor that the Contractor may retain, for all Services and Expenses to be provided under this Professional Services Agreement shall not exceed Sixty Thousand Dollars ($60,000) (“Not-to-Exceed” or “NTE”).

Contractor shall satisfactorily perform and complete, in the judgement of CPA, all required Services in accordance with Exhibit A notwithstanding the fact that total payment from CPA shall not exceed the NTE.
To: Clean Power Alliance (CPA) Board of Directors

From: Geoff Ihle, Director, Energy Market Risk Management

Approved by: Ted Bardacke, Chief Executive Officer
               David McNeil, Chief Financial Officer

Subject: 2022 Q3 Risk Management Team Report

Date: December 1, 2022

RECOMMENDATION
Receive and file.

ATTACHMENT
1. 2022 Q3 RMT Report
I. Introduction

The Board of Directors of Clean Power Alliance (CPA) approved an Energy Risk Management Policy (ERMP) at its July 12, 2018 meeting, which provides the framework for conducting procurement activities in a manner that maximizes the probability of CPA meeting its portfolio, reliability, and financial goals. The ERMP was subsequently amended in July 2019, July 2020, July 2021, and July 2022.

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

II. Risk Management Team Activities

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

A. ERMP Acknowledgement Form

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

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

B. Transaction Types

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

1 The RMT is comprised of CPA’s Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, and Vice President of Power Supply.
C. Counterparty Suitability

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

Pursuant to the ERMP, no counterparty credit limit may exceed $50 million. Due to elevated forward power prices, during the quarter, several of CPA’s counterparties credit exposures continued to exceed their designated credit limits. CPA continues to manage these exposures through margining and other credit enhancement requests where contractually permitted. As anticipated in the Q2 2022 RMT report, CPA’s credit exposure to these counterparties shrunk significantly over the third quarter. It is expected to continue to shrink as these counterparties deliver energy to CPA through Q4 2022.

D. System of Record

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

E. Position Tracking and Management Reporting

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

- **Financial Model Forecast**: The financial model captures projected revenues and energy and operating costs and produces various financial reports and forecasts on an accrual basis. The model uses load forecast data produced by CPA, energy contract details from CPA’s Front Office and Middle Office systems, revenue projections from CPA’s revenue model\(^2\) and forward prices from the ICE Data Service and TPS.

- **Net Position Report**: Short- and long-term net position reports are in production, managed directly by CPA procurement staff, and linked to TPS’s trade capture system or to CPA’s internal energy trading and risk management system (ETRM), currently in development. The short-term net position report updates daily and incorporates the current weather outlook for the next 60 days to show net positions for the current and next months. The long-term net position report assumes normal weather and shows net positions through the balance of the current year and prompt four years.

- **Counterparty Credit Exposure**: CPA is adhering to the credit policies included in the ERMP, with the above-mentioned market price-induced exceedances being managed by

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\(^2\) CPA’s revenue model is currently maintained by a third-party consultant, MRW. Plans are in place to transition that model to being maintained in-house.
the RMT. CPA receives daily updates of counterparty credit exposures on both a notional and mark-to-market basis.

- **Monthly Risk Analysis:** The ERMP requires both stress testing of financial results, as well as probability-based assessments of future financial projections. CPA continues to implement and improve risk analysis tools to stress test financial results and validate potential hedging transactions. Recurring monthly risk analysis focuses is on the prompt 12 months, while specific studies extend through calendar 2024.

- **Quarterly Board Report:** Subject of this report.

**F. Delegation of Authority**

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

**G. Limit and Other Compliance Violations**

The ERMP requires that transaction volumes should not be executed that exceed the requirements of meeting CPA's load (energy and capacity), renewable and/or carbon free energy requirements. The ERMP designates specific prompt-year (PY) up to prompt 5-year hedge targets for different product types.

For energy, these targets are measured at the end of the quarter for the following prompt quarter, e.g., Q2 for prompt Q3. RMT reviewed the relevant quarterly hedge targets for 2022 and beyond and identified the following policy deviation:

<table>
<thead>
<tr>
<th>Policy Deviation</th>
<th>Required Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due to an update to the load forecast (resulting in higher forecast energy usage) and a delay in commercial online dates of two projects under long term contract (resulting in lower forecast supply), the Q2 and Q3 2023 periods did not meet the 85% Energy Risk Hedging Strategy minimum.</td>
<td>The Q2 2023 deviation was resolved in September 2022 as CPA acquired additional hedges. Based on planned hedging activities, the Q3 2023 deviation is expected to be resolved by the end of December 2022.</td>
</tr>
</tbody>
</table>

**H. Training**

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

**I. Hedging Strategy**

With the exception of the deviation described in Section G, CPA is compliant with the hedging strategy provided in Appendix A of the ERMP.
J. Financial Performance

CPA recorded net energy revenue (electricity revenue less cost of energy) of $4.7 million in Q1FY 2022-23. The results were 87% below budget and reflected the impact of an extreme heat event that occurred in early September 2022.

III. General Market Conditions

Pricing in Q3 2022 reflected summer temperature and load conditions, with elevated market prices compared to the previous quarter. Load was flat to forecast in July and August 2022, and higher than forecast in September 2022 as temperatures increased. Day Ahead energy market prices were higher than energy market forward prices used to set CPA 2022/2023 rates and budget.
RECOMMENDATION
Receive and file.

ATTACHMENT
1. Q1 Financial Report
## CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

### STATEMENT OF NET POSITION

**AS OF SEPTEMBER 30, 2022**

### ASSETS

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$98,830,346</td>
<td>$53,357,388</td>
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<tr>
<td>Accounts receivable, net of allowance</td>
<td>155,511,536</td>
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</tr>
<tr>
<td>Accrued revenue</td>
<td>73,173,244</td>
<td>55,978,851</td>
</tr>
<tr>
<td>Other receivables</td>
<td>13,961,875</td>
<td>3,453,783</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>10,512,598</td>
<td>3,580,033</td>
</tr>
<tr>
<td>Deposits</td>
<td>44,142,542</td>
<td>17,894,808</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>2,400,000</td>
<td>3,614,700</td>
</tr>
<tr>
<td>Total current assets</td>
<td>398,532,141</td>
<td>269,799,430</td>
</tr>
<tr>
<td><strong>Noncurrent assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>709,857</td>
<td>608,858</td>
</tr>
<tr>
<td>Intangible - right-to-use lease asset</td>
<td>2,488,924</td>
<td>-</td>
</tr>
<tr>
<td>Deposits</td>
<td>88,876</td>
<td>88,875</td>
</tr>
<tr>
<td>Total noncurrent assets</td>
<td>3,287,657</td>
<td>697,733</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$401,819,798</td>
<td>$270,497,163</td>
</tr>
</tbody>
</table>

### LIABILITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$2,989,330</td>
<td>$4,611,547</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>196,468,151</td>
<td>127,308,417</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>4,068,916</td>
<td>2,020,200</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>10,139,202</td>
<td>8,353,140</td>
</tr>
<tr>
<td>Loans payable to County of Los Angeles</td>
<td>-</td>
<td>30,000,000</td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>259,675</td>
<td>5,769,400</td>
</tr>
<tr>
<td>Unearned program funds</td>
<td>3,930,813</td>
<td>2,005,420</td>
</tr>
<tr>
<td>Lease liability, current</td>
<td>363,658</td>
<td>-</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>218,219,746</td>
<td>180,068,125</td>
</tr>
<tr>
<td><strong>Noncurrent liabilities</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bank Loan</td>
<td>40,000,000</td>
<td>-</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>3,132,849</td>
<td>6,904,000</td>
</tr>
<tr>
<td>Deferred rent</td>
<td>-</td>
<td>183,855</td>
</tr>
<tr>
<td>Lease liability, noncurrent</td>
<td>2,560,183</td>
<td>-</td>
</tr>
<tr>
<td>Total noncurrent liabilities</td>
<td>45,693,032</td>
<td>7,087,855</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>$263,912,778</td>
<td>$187,155,980</td>
</tr>
</tbody>
</table>

### NET POSITION

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment in capital assets</td>
<td>$274,939</td>
<td>$608,858</td>
</tr>
<tr>
<td>Restricted for collateral</td>
<td>2,400,000</td>
<td>3,614,700</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>135,232,081</td>
<td>79,117,626</td>
</tr>
<tr>
<td>Total net position</td>
<td>$137,907,020</td>
<td>$83,341,183</td>
</tr>
</tbody>
</table>
## Clean Power Alliance of Southern California
### Statement of Revenues, Expenses, and Changes in Net Position
#### For Years Ended September 30, 2022

<table>
<thead>
<tr>
<th></th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Revenues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$377,176,853</td>
<td>$297,566,657</td>
</tr>
<tr>
<td>Other revenue</td>
<td>361,189</td>
<td>225,638</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>$377,538,042</td>
<td>$297,792,295</td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost of electricity</td>
<td>372,887,614</td>
<td>281,724,860</td>
</tr>
<tr>
<td>Contract services</td>
<td>4,697,629</td>
<td>4,340,088</td>
</tr>
<tr>
<td>Staff compensation</td>
<td>2,791,386</td>
<td>2,004,434</td>
</tr>
<tr>
<td>General and administration</td>
<td>555,035</td>
<td>505,528</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>$380,931,665</td>
<td>$288,574,910</td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>(3,393,623)</td>
<td>9,217,385</td>
</tr>
<tr>
<td><strong>Nonoperating Revenues (Expenses)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest income</td>
<td>190,780</td>
<td>8,746</td>
</tr>
<tr>
<td>Interest and related expenses</td>
<td>(125,492)</td>
<td>(114,247)</td>
</tr>
<tr>
<td>Interest expense - lease</td>
<td>(17,873)</td>
<td>-</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>47,414</td>
<td>(105,501)</td>
</tr>
<tr>
<td><strong>Change in Net Position</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net position at beginning of period</td>
<td>141,253,228</td>
<td>74,207,784</td>
</tr>
<tr>
<td>Net position at end of period</td>
<td>$137,907,020</td>
<td>$83,319,668</td>
</tr>
</tbody>
</table>

---

*CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA*

*STATEMENT OF REVENUES, EXPENSES*  
*AND CHANGES IN NET POSITION*  
*FOR YEARS ENDED SEPTEMBER 30, 2022*

*Agenda Page 39*
RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net operating income (loss)</td>
<td>(3,393,623)</td>
<td>9,217,385</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>54,525</td>
<td>27,470</td>
</tr>
<tr>
<td>Amortization expense</td>
<td>95,727</td>
<td>-</td>
</tr>
<tr>
<td>Revenue adjusted for allowance for uncollectible accounts</td>
<td>5,495,854</td>
<td>4,696,311</td>
</tr>
<tr>
<td>(Increase) decrease in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(64,436,618)</td>
<td>(48,392,277)</td>
</tr>
<tr>
<td>Other receivables</td>
<td>(6,302,411)</td>
<td>(1,040,730)</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>(17,676,453)</td>
<td>(79,787)</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>(4,374,194)</td>
<td>608,171</td>
</tr>
<tr>
<td>Deposits</td>
<td>(18,027,012)</td>
<td>(4,567,966)</td>
</tr>
<tr>
<td>Increase (decrease) in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(1,536,984)</td>
<td>(172,600)</td>
</tr>
<tr>
<td>Energy market settlements payable</td>
<td>(8,623,026)</td>
<td>(6,719,550)</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>121,461,970</td>
<td>45,869,635</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>1,631,290</td>
<td>295,746</td>
</tr>
<tr>
<td>User taxes due to other governments</td>
<td>4,112,844</td>
<td>3,024,040</td>
</tr>
<tr>
<td>Supplier security deposits</td>
<td>(4,524,976)</td>
<td>(37,789,000)</td>
</tr>
<tr>
<td>Unearned program funds</td>
<td>426,780</td>
<td>407,433</td>
</tr>
<tr>
<td>Net cash provided (used) by operating activities</td>
<td>4,383,694</td>
<td>(34,615,719)</td>
</tr>
</tbody>
</table>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan proceeds</td>
<td>60,000,000</td>
<td>30,000,000</td>
</tr>
<tr>
<td>Principal payments on loan</td>
<td>(20,000,000)</td>
<td>-</td>
</tr>
<tr>
<td>Interest and related expense payments</td>
<td>(91,446)</td>
<td>(81,492)</td>
</tr>
<tr>
<td>Net cash provided (used) by non-capital financing activities</td>
<td>39,908,554</td>
<td>29,918,508</td>
</tr>
</tbody>
</table>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payments to acquire capital assets</td>
<td>(90,125)</td>
<td>(146,415)</td>
</tr>
<tr>
<td>Payments on lease (for both principal and interest)</td>
<td>(100,228)</td>
<td>-</td>
</tr>
<tr>
<td>Net cash provided (used) by capital and related financing activities</td>
<td>(190,353)</td>
<td>(146,415)</td>
</tr>
</tbody>
</table>

CASH FLOWS FROM INVESTING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income received</td>
<td>190,780</td>
<td>8,746</td>
</tr>
<tr>
<td>Net cash provided (used) by investing activities</td>
<td>190,780</td>
<td>8,746</td>
</tr>
<tr>
<td>Net change in cash and cash equivalents</td>
<td>44,292,675</td>
<td>(4,834,880)</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of period</td>
<td>56,937,672</td>
<td>61,806,968</td>
</tr>
<tr>
<td>Cash and cash equivalents at end of period</td>
<td>$ 101,230,346</td>
<td>$ 56,972,088</td>
</tr>
</tbody>
</table>

Reconciliation to the Statement of Net Position

<table>
<thead>
<tr>
<th>Description</th>
<th>2022</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents (unrestricted)</td>
<td>$ 98,830,346</td>
<td>$ 53,357,388</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>2,400,000</td>
<td>3,614,700</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 101,230,346</td>
<td>$ 56,972,088</td>
</tr>
</tbody>
</table>
## Clean Power Alliance of Southern California

**Budgetary Comparison Schedule**

**For Year Ended September 30, 2022**

<table>
<thead>
<tr>
<th></th>
<th>2022/23 YTD Budget</th>
<th>2022/23 YTD Actual</th>
<th>2022/23 YTD Budget Variance (Under/Over)</th>
<th>2022/23 YTD Actual / Budget %</th>
<th>2022/23 Budget</th>
<th>2022/23 Remaining Budget</th>
<th>2022/23 Remaining Budget %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue - electricity, net</td>
<td>$359,469,732</td>
<td>$377,176,853</td>
<td>$17,707,121</td>
<td>105%</td>
<td>$1,110,780,980</td>
<td>$733,604,127</td>
<td>66%</td>
</tr>
<tr>
<td>Other revenues</td>
<td>713,510</td>
<td>361,189</td>
<td>(352,321)</td>
<td>51%</td>
<td>2,742,000</td>
<td>2,380,811</td>
<td>87%</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>360,183,242</td>
<td>377,538,042</td>
<td>17,354,800</td>
<td>105%</td>
<td>1,113,522,980</td>
<td>735,984,938</td>
<td>66%</td>
</tr>
<tr>
<td><strong>Energy Costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy procurement</td>
<td>324,031,365</td>
<td>372,887,614</td>
<td>48,856,250</td>
<td>115%</td>
<td>870,533,000</td>
<td>497,645,386</td>
<td>57%</td>
</tr>
<tr>
<td>Total energy costs</td>
<td>324,031,365</td>
<td>372,887,614</td>
<td>48,856,250</td>
<td>115%</td>
<td>870,533,000</td>
<td>497,645,386</td>
<td>57%</td>
</tr>
<tr>
<td><strong>Operating Revenues less energy costs</strong></td>
<td>36,151,877</td>
<td>4,650,428</td>
<td>(31,501,450)</td>
<td>13%</td>
<td>242,989,980</td>
<td>238,339,553</td>
<td>98%</td>
</tr>
<tr>
<td><strong>Operating Expenditures</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staffing</td>
<td>3,217,190</td>
<td>2,791,386</td>
<td>(425,804)</td>
<td>87%</td>
<td>13,976,000</td>
<td>11,184,614</td>
<td>80%</td>
</tr>
<tr>
<td>Technical services</td>
<td>363,750</td>
<td>288,281</td>
<td>(75,469)</td>
<td>79%</td>
<td>1,436,000</td>
<td>1,147,719</td>
<td>80%</td>
</tr>
<tr>
<td>Legal services</td>
<td>356,060</td>
<td>168,409</td>
<td>(187,651)</td>
<td>47%</td>
<td>1,243,000</td>
<td>1,074,591</td>
<td>86%</td>
</tr>
<tr>
<td>Other professional services</td>
<td>566,754</td>
<td>164,261</td>
<td>(402,494)</td>
<td>29%</td>
<td>1,902,000</td>
<td>1,737,739</td>
<td>91%</td>
</tr>
<tr>
<td>Communications and outreach</td>
<td>506,995</td>
<td>210,779</td>
<td>(296,216)</td>
<td>42%</td>
<td>2,018,000</td>
<td>1,807,221</td>
<td>90%</td>
</tr>
<tr>
<td>Mailers</td>
<td>727,045</td>
<td>440,314</td>
<td>(286,731)</td>
<td>61%</td>
<td>1,346,000</td>
<td>905,686</td>
<td>67%</td>
</tr>
<tr>
<td>Billing data manager</td>
<td>2,602,735</td>
<td>2,601,884</td>
<td>(851)</td>
<td>100%</td>
<td>10,474,000</td>
<td>7,872,116</td>
<td>75%</td>
</tr>
<tr>
<td>SCE services</td>
<td>528,990</td>
<td>480,000</td>
<td>(48,990)</td>
<td>91%</td>
<td>2,116,000</td>
<td>1,636,000</td>
<td>77%</td>
</tr>
<tr>
<td>Customer programs</td>
<td>1,148,005</td>
<td>343,701</td>
<td>(804,304)</td>
<td>30%</td>
<td>4,663,000</td>
<td>4,319,299</td>
<td>93%</td>
</tr>
<tr>
<td>General and administrations</td>
<td>1,450,980</td>
<td>555,035</td>
<td>(895,945)</td>
<td>38%</td>
<td>5,877,000</td>
<td>5,321,965</td>
<td>91%</td>
</tr>
<tr>
<td>Total operating expenditures</td>
<td>11,468,504</td>
<td>8,044,050</td>
<td>(3,424,454)</td>
<td>70%</td>
<td>45,051,000</td>
<td>37,006,949</td>
<td>82%</td>
</tr>
<tr>
<td><strong>Operating income</strong></td>
<td>24,683,373</td>
<td>(3,393,623)</td>
<td>(28,076,996)</td>
<td>-14%</td>
<td>197,938,981</td>
<td>201,332,603</td>
<td>102%</td>
</tr>
<tr>
<td><strong>Non-operating revenues (expenditures)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest income</td>
<td>121,500</td>
<td>190,780</td>
<td>69,280</td>
<td>157%</td>
<td>486,000</td>
<td>295,220</td>
<td>61%</td>
</tr>
<tr>
<td>Finance and interest expense</td>
<td>(236,505)</td>
<td>(143,365)</td>
<td>93,140</td>
<td>61%</td>
<td>(562,000)</td>
<td>(418,635)</td>
<td>74%</td>
</tr>
<tr>
<td>Total non-operating revenues (expenditures)</td>
<td>(115,005)</td>
<td>47,414</td>
<td>162,419</td>
<td>-41%</td>
<td>(76,000)</td>
<td>(123,414)</td>
<td></td>
</tr>
<tr>
<td><strong>Change in net position</strong></td>
<td>24,568,368</td>
<td>(3,346,208)</td>
<td>(27,914,577)</td>
<td>197,862,981</td>
<td>201,209,189</td>
<td></td>
<td>102%</td>
</tr>
<tr>
<td><strong>Other uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital outlay</td>
<td>56,125</td>
<td>90,125</td>
<td>34,000</td>
<td>161%</td>
<td>224,500</td>
<td>134,375</td>
<td>60%</td>
</tr>
<tr>
<td>Depreciation and Amortization</td>
<td>(157,020)</td>
<td>(150,252)</td>
<td>6,768</td>
<td>96%</td>
<td>(622,000)</td>
<td>(471,748)</td>
<td>76%</td>
</tr>
<tr>
<td>Total other uses</td>
<td>(100,895)</td>
<td>(60,127)</td>
<td>(40,768)</td>
<td>60%</td>
<td>(397,500)</td>
<td>(337,373)</td>
<td>85%</td>
</tr>
<tr>
<td><strong>Change in fund balance</strong></td>
<td>$24,669,263</td>
<td>$ (3,286,081)</td>
<td>$ (27,955,344)</td>
<td>-13%</td>
<td>$198,260,481</td>
<td>$201,546,562</td>
<td></td>
</tr>
</tbody>
</table>
## Select Financial Indicators

<table>
<thead>
<tr>
<th>Note</th>
<th>Description</th>
<th>Sep-21</th>
<th>Dec-21</th>
<th>Mar-22</th>
<th>Jun-22</th>
<th>Sep-22</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Working Capital</td>
<td>89,731,305</td>
<td>107,892,204</td>
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<td>85,085,627</td>
<td>54,537,672</td>
<td>98,830,346</td>
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<td>Gross Margin</td>
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<td>8%</td>
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<td>11%</td>
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<td>5%</td>
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### Percentage Change from Prior Quarter

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<th>Indicator</th>
<th>Sep-21 %</th>
<th>Dec-21 %</th>
<th>Mar-22 %</th>
<th>Jun-22 %</th>
<th>Sep-22 %</th>
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<td>Total Liquidity</td>
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<td>Days Liquidity on Hand (TTM)</td>
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<td>11%</td>
<td>-18%</td>
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### Notes

1. Current Assets less Current Liabilities
2. Current Assets divided by Current Liabilities
3. Accounts receivable divided by Sales divided by 365
4. Net Position plus Fiscal Stabilization Fund
5. Equity (Net Position + FSF) divided by Total Assets
6. Unrestricted cash and cash equivalents
7. Total Line of Credit less Borrowing and Letters of Credit
8. Sum of Available Cash and Line of Credit
9. Total Liquidity divided by trailing 12 month expenses divided by 365
10. Operating revenue less energy cost divided by operating revenue
11. Change in net position divided by operating revenue

---

**Financial Indicators:**

- **Working Capital**
- **Equity**
- **Total Liquidity**

**Fiscal Quarter:**

- **Sep-21**
- **Dec-21**
- **Mar-22**
- **Jun-22**
- **Sep-22**

**Note:**

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<th>Note</th>
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<td>1</td>
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<td>3</td>
<td>Accounts receivable divided by Sales divided by 365</td>
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<td>4</td>
<td>Net Position plus Fiscal Stabilization Fund</td>
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<td>Equity (Net Position + FSF) divided by Total Assets</td>
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<td>Total Line of Credit less Borrowing and Letters of Credit</td>
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<td>8</td>
<td>Sum of Available Cash and Line of Credit</td>
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<td>Total Liquidity divided by trailing 12 month expenses divided by 365</td>
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<tr>
<td>10</td>
<td>Operating revenue less energy cost divided by operating revenue</td>
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<tr>
<td>11</td>
<td>Change in net position divided by operating revenue</td>
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</table>
CPA recorded an operating loss of $18.8 million in September 2022 which was $29.1 million less than the budgeted operating income of $10.3 million. For the year to date, CPA has recorded an operating loss of $3.4 million, $28.1 million less than the budgeted operating income of $24.7 million.

Year-to-date results were impacted by the following factors:

1. Revenue was $377.5 million or 5% higher than budgeted revenue as a result of warmer than normal temperatures and higher electricity use in CPA’s service area.

2. The cost of energy was $372.9 million or 15% higher than budgeted as a result of warmer than normal temperatures, most notably an extreme heat event in the western United States that lasted from in the first two weeks of the month, higher electricity use by CPA customers, higher prices in the California Independent System Operator (CAISO) administered markets and higher charges imposed by the CAISO to operate the grid.

3. Operating costs were lower than budgeted primarily as a result of lower General and Administration and other services costs than budgeted and the non-utilization of contingencies.

On September 26, 2022, CPA drew $60 million on its $80 million credit facility with JP Morgan. CPA paid $20 million of the loan on September 29, 2022. The remaining loan balance was repaid in October 2022. As of September 30, 2022, CPA had total liquidity of $138 million consisting of $98.8 million in unrestricted cash and cash equivalents, and $39.853 million available on its bank line of credit, up from $133 million and $134 million of liquidity as of September 30, 2021 and June 30, 2022 respectively.

CPA is in sound financial health and compliance with its bank and other credit covenants.
To: Clean Power Alliance (CPA) Board of Directors

From: Cara Rene, Director, Communications & Marketing

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Communications Report (August – October 2022)

Date: December 1, 2022

RECOMMENDATION

Receive and file.

ATTACHMENT

1. Quarterly Report
Communications & Marketing
Community Engagement

Quarterly Update
August – October 2022
What we’re excited about

• Awarded more than $200K in funds to 10 regional nonprofits as part of the 2022 Community Benefits Grant program to foster local green initiatives.

• Communicated with 100% Green Power communities about customer actions in response to this year’s change in preferred energy option: opt downs and opt outs collectively continue to reflect less than one percent of affected customers.

• Continued to grow our audiences on Instagram (295 new followers) and Twitter (437 new followers), enhancing CPA visibility and outreach.

• Fully enrolled the Power Share program through a multilayered effort of direct mail, radio, social media, email, and community outreach.

• Participated in regional events to engage the public: National Drive Electric Week, Clean Air Day, Alhambra Pumpkin Run, Hawthorne World Fest Celebration, and Los Angeles RiverFest.

• CPA staff participated on a panel for the Los Angeles Business Council’s Sustainability Summit moderated by LA Times reporter Sammy Roth. The event was included as part of the LA Times weekly Boiling Point newsletter.
Default Rate Change Communications

**Postcards**
Notices sent to affected customers in September and October to announce the change to 100% Green Power

**Social media**
Social media posts on Facebook, Instagram, LinkedIn and Twitter thanked communities for choosing 100% Green and let audiences know of the environmental benefits of renewable energy

**Website**
The ‘Our Green Cities’ webpage features community-specific information and avenues for customers to select another option if they choose

**Customer activity reports**
CPA provides periodic customer activity updates to city staff to share consumer actions related to the change to 100% Green Power. To date, opt down and opt out actions collectively reflect less than one percent of affected customers.
Earned Media Highlights

CPA distributed six news releases and garnered nearly $5.6 million in earned media value.

High performing media outreach included:

- Communities Choose 100% Green Power: 40 mentions; audience reach of 182M
- Luna Battery Storage: 91 mentions; audience of 29M
- Rooftop Solar Projects: 90 mentions; audience of 31M
- Fervo Geothermal Agreement: 29 mentions; audience of 14M
- Community Benefit Grant Awardees: 89 mentions; audience of 31M
Community Engagement

Staying active in LA and Ventura Counties

- **13 presentations** with key stakeholders including city councils, state elected officials, community-based organizations and neighborhood groups.

- **12 community events** at street fairs, climate awareness events, and community celebrations allowed CPA staff and CAC members to increase education about CPA.

- **20 meetings** with business associations to share program participation and relevant contracting opportunities.

Connecting with partner cities

Presented to the city councils of Paramount and Arcadia to highlight key programs, rates, and discuss issues impacting their communities.
How CPA Fully Enrolled the Power Share Program

OVERVIEW

The Power Share program provides CPA income-qualified customers in under-resourced communities with 100% renewable energy and a 20 percent discount.

GOAL

Enroll 6,300 DAC customers

CHALLENGES

- Low CPA and program awareness
- Confusion about locating and needing SCE account number to register
- Must be enrolled as a CARE/FERA customer or certify that you are eligible

SOLUTIONS:

Clear communication in three languages

Simple customer enrollment experience

Targeted marketing and community outreach

County and City Endorsements
Power Share Success:
Marketing and Optimization Helped Enroll 6,300 Customers
Direct mail/radio/brochures/fact sheets/paid social media/print media in critical languages

DIRECT MAIL
VENTURA COUNTY RESIDENTS
Sign-up for a 20% discount on your current monthly electric bill and get 100% renewable energy.

Sign-up today at SaveWithCPA.org

RADIO + SOCIAL MEDIA

COMMUNITY OUTREACH

EMAIL

The Power Share program from Clean Power Alliance gives customers a 20% discount off their current monthly electric bill plus 100% clean energy. And, when you combine it with CARE and FERA discounts, eligible customers can save up to 45% a month.

Enrollment is limited, please apply today.

It just takes three steps to sign-up

Step 1: Your account number can be located on your printed electric bill or when you log into your online account, in the top right-hand corner.

Step 2: Complete the form by providing the last name on your account and your service zip code.

Step 3: Review response.

Sign up now

Solo se necesitan tres pasos para inscribirse.
Heat Wave 2022: Grid Emergency Communications

In September, California experienced an unprecedented weeklong heat wave that impacted communities across the state and imperiled electricity grid stability. CPA communicated throughout the heat event to inform customers about actions they could take to lessen demand on our electricity resources.

Kept customers and partner communities updated and informed through multiple channels:

- **10 email communications to partner communities** to provide the updated information and social media assets in critical languages to support communicating with constituents
- **42 social media posts across three platforms** to share Flex Alerts and key information so customers could take action on energy savings
- **4 mass email communications to approx. 500K customers** alerting consumers to imminent concerns with grid reliability and encouraging an immediate decrease in energy consumption to prevent outages
- **Web banner alerts** – updated CPA’s website homepage with timely Flex Alert information with links to CAISO’s website
- **7 energy saving events (in month of Sept)** – alerted Power Response customers about the opportunity to reduce energy use
Our LinkedIn page had an **18% increase** in visitors with 1,485 individual page views, in addition to **3,797 unique visitors**.

**Best performing post:** Join the Team recruitment video received 39,845 impressions and 231 clicks.

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Our Twitter page attracted **437 new followers** and averaged **6,800 impressions** per day.

**Best performing tweet:** Tweet thanking Power Response Smart Home participants had 5,572 impressions

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Our Instagram page added **295 new followers** and had a **96% increase** in accounts reached.

**Best performing post:** Time of Use video promoting energy and cost savings reached 10,892 people

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Our Facebook page had a reach of **73,522 people** - a 173.2% increase - and had 56,882 paid impressions, a **137.1% increase in total audience**.

**Best performing post:** CPA Flex Alert post reached 878 people.
Website Performance

CPA’s website garnered 211,290 page views and reduced its bounce rate compared to prior quarters. Emails communicating about the September heat wave and energy saving programs helped boost website visits.
A Look Ahead

December

- Launch revised public documents webpage to improve access to key documents
- External messaging about new cities joining CPA
- Launch Voyager Scholarship webpage featuring profiles of future energy leaders
- Family holiday event in Ventura County to engage the public and grow brand awareness

January

- Planning for customer enrollment in new cities joining CPA
- City manager retreats to further develop municipal relationships and understanding of CPA
- Introductory meetings with new state representatives
- Planning for CPA’s 5th anniversary year
RECOMMENDATION
Receive and file the Board of Directors and Standing Committee meeting schedule for 2023.

SUMMARY
The 2023 Board of Directors and Standing Committees meeting schedule will follow CPA's current monthly meeting cadence. In total, CPA is slated to hold 67 meetings in 2023 that are subject to the Brown Act:

- Board of Directors, 1st Thursday, 2:00 p.m.
- Executive Committee, 3rd Wednesday, 1:30 p.m.
- Legislative & Regulatory Committee, 4th Wednesday, 10:00 a.m.
- Finance Committee, 4th Wednesday, 11:00 a.m.
- Energy Planning & Resources Committee, 4th Wednesday, 12:15 p.m.
- Community Advisory Committee, 2nd Thursday, 1:00 p.m.

After the incorporation of new Board members at the beginning of 2023, CPA may consider changes to the days and/or times of the meetings.

ATTACHMENT
1. 2023 Meeting Schedule
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
2023 MEETING SCHEDULE

This schedule is updated regularly. Please check our website at [www.cleanpoweralliance.org](http://www.cleanpoweralliance.org) to view the most up to date version.

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<th>APR</th>
<th>MAY</th>
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*Red Strikeout* indicates cancelled meeting, and *Red Font* indicates new meeting date. Agendas are available at [www.cleanpoweralliance.org/agendas](http://www.cleanpoweralliance.org/agendas) at least 72 hours prior to the meeting. For questions, contact the Clerk of the Board at clerk@cleanpoweralliance.org or 213-713-5995.

Last updated: 12/1/2022

Agenda Page 57
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: December 1, 2022

RECOMMENDATION
Receive and file.

MEETING REPORT
CAC 2022 Retreat
On Thursday, November 17th, the CPA held its annual retreat to give CAC members the opportunity to take a deep dive into issues of importance and discuss shared goals and perspectives. Focus topics included the following:

- Youth Education Initiative
- CPA Diversity, Equity, and Inclusion Plan
- CAC 2021-2022 Workplan Path Forward

This board report is dedicated to summarizing the retreat, the feedback that CAC provided, and next steps.

Youth Education Initiative
Over the past year, the CAC has discussed the advancement of a Youth Education Initiative. In the last several weeks, CAC members Cris Gutierrez and Dr. Irella Perez have been drafting a proposed Youth Education Initiative framework for consideration by the CAC. The CAC was provided an overview of the framework for feedback during the retreat on November 17th.
The framework identified potential partnerships with organizations, such as Pando Days and Grades of Green, which provide opportunities to educate K-12 and college students about CPA, create regional youth ambassadors, and advance knowledge about renewable energy and future clean energy career opportunities.

**Youth Education Initiative: Breakout Session**

The CAC was divided into two groups to discuss goals and priorities for the initiative, CAC capacity for implementation, and deliverables/metrics to gauge success in the first year and beyond.

The CAC provided extensive feedback on how this initiative could be structured, such as:

- Work with students to educate communities about energy and ensure information about CCA’s is disseminated throughout CPA territory.
- Work with identified organizations to focus educational efforts on CCA’s and renewable energy within impacted communities and hard-to-reach populations.
- Reconvene the CAC Youth Education Initiative Working Group, with a focus on establishing reasonable deliverables and metrics to gauge success over the next year and beyond.
- Identify statewide program and grant opportunities focused on youth education that the CAC committee could leverage to enhance this initiative.

The CAC will reconvene the Youth Initiative Working Group in the coming months to consider the feedback received at this retreat and develop a framework and path forward for consideration and approval.

**CPA Diversity, Equity, and Inclusion (DEI) Plan**

In the last year, CPA engaged Orange Grove Consulting (OGC) to conduct a DEI assessment and inclusive leadership training and to work with staff to enhance CPA’s DEI plan. In April 2022, OGC held listening sessions with CAC representatives. The feedback received from the CAC informed OGC’s assessment of CPA’s external DEI activities and their impacts on CPA customers and communities. During the retreat, CPA staff provided an overview of CPA’s updated DEI plan which includes a statement of CPA’s DEI mission and values and prioritized FY 2022/23 goals for each of CPA’s three DEI pillars:
• **Belonging** - fostering a diverse workplace where people are valued, encouraged to bring their whole selves, and supported equitably.

• **Community** - investing in CPA communities to support a just and sustainable clean energy future.

• **Equitable Business** - supporting growth and opportunities for our communities holding a standard for strong, equitable business practices.

CAC members conveyed their support for CPA’s ongoing DEI efforts. They noted the importance of having clear metrics to ensure accountability for results; active ownership of the DEI plan by CPA staff; and active listening and collaboration with community partners and stakeholders to build trust and align DEI efforts with community needs and priorities. Staff will continue working with the CAC to incorporate relevant DEI objectives into the CAC Workplan.

**CAC 2022-2023 Workplan**

Beginning in June 2020, at the request of CAC members, staff conducted a series of three visioning sessions with the CAC Chair and Vice Chairs to set CAC priorities and expectations for 2020-2021. CAC members shared individual and regional perspectives reflecting the priorities of their respective communities, which informed the first adopted CAC workplan.

Since the adoption of the first CAC Workplan in 2020, the CAC has received a yearly update on workplan priorities, key accomplishments, and upcoming workplan implementation tasks during the annual CAC retreat. At the November 17th retreat, staff highlighted event participation by CAC members, outcomes from the CAC working groups on NEM 3.0 and Youth Education, and key deliverables in the coming months.

Beginning in June, staff will work with the CAC to update the 2022-2023 Workplan, with the expectation that the 2023-2024 Workplan will be adopted at a subsequent meeting.

**ATTACHMENT**

1. CAC Meeting Attendance
## Community Advisory Committee Attendance

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### 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**
- Chair/Vice Chair Elections
- AB 205 Impacts

**August – Dark**

**September**
- CEO Update
- Vice Chair Election

**October**
- Member Expansion
- IRP Presentation

**November**
- Youth Initiative
- DEI Update
- CAC Workplan Update

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Staff Report – Agenda Item 9

To: Clean Power Alliance (CPA) Board of Directors
From: Karen Schmidt, Director, Rates and Strategy
Approved By: Ted Bardacke, Chief Executive Officer
Subject: Public Hearing: Consider Addendum No. 4 to the Implementation Plan and Adopt Resolution No. 22-012-044 to Approve Addendum No. 4 to the Clean Power Alliance Implementation Plan and to Authorize Staff to Submit Addendum to the California Public Utilities Commission
Date: December 1, 2022

RECOMMENDATION
Conduct a public hearing to consider adoption of Resolution No. 22-012-044 (Attachment 1) to approve Addendum No. 4 (Attachment 2) adding the cities of Hermosa Beach, Monrovia, and Santa Paula as members of Clean Power Alliance and to authorize staff to submit Addendum No. 4 as attached, or in a substantially similar form, to the California Public Utilities Commission on or before December 31, 2022.

BACKGROUND
Staff is presenting Addendum No. 4 to CPA’s Implementation Plan, a document required by the California Public Utilities Commission (CPUC) for CPA to provide energy service to new member communities. The Board adopted its original Implementation Plan on August 4, 2017, at which time the organization included three members: Los Angeles County, Rolling Hills Estates, and South Pasadena. On December 17, 2017, the Board adopted Implementation Plan Addendum No. 1, adding 21 additional cities, and on March 1, 2018, the Board adopted Addendum No. 2, adding 7 additional cities. On December 13, 2018, the Board adopted Implementation Plan Addendum No. 3, adding one additional city, bringing the total membership of CPA to its current 32 jurisdictions.
The Board voted on September 1, 2022, to invite Hermosa Beach, Monrovia, and Santa Paula to join CPA. Hermosa Beach adopted its ordinance to join CPA on October 11, 2022; Santa Paula adopted its ordinance to join CPA on November 2, 2022; and Monrovia adopted its ordinance to join CPA on November 15, 2022. Pursuant to CPUC regulations, a resolution approving Addendum No. 4 must be adopted by the Board and filed with the CPUC by December 31, 2022 in order for CPA to begin serving load to customers in these cities in 2024. The three cities collectively will add approximately 38,400 customers and increase total load (kWh) by approximately 3.7%.

Addendum No. 4 updates CPA’s forecasted load, capacity requirements, Renewable Portfolio Standard (RPS) requirements, and operating results to reflect the anticipated impacts of the planned expansion to the new member agencies as well as the most recent historical energy use within CPA’s service territory. It sets March 2024 as the proposed implementation date when service to customers in the new member communities would begin.

Upon Board approval of Resolution 22-012-044, the new member agencies will sign CPA’s Joint Powers Agreement (JPA) in December 2022 and their signature pages will be added to the appendices of Addendum No. 4 prior to its submission to the CPUC. The new members will be officially admitted to the JPA after the CPUC’s certification of and issuance, if any, of findings on Addendum No. 4 to the Implementation Plan and the satisfaction of any other conditions that the Board may establish.

**ATTACHMENTS**

1. Resolution No. 22-012-044
2. [Implementation Plan Addendum No. 4 (Link)]
RESOLUTION NO. 22-12-044

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA TO APPROVE IMPLEMENTATION PLAN ADDENDUM NO. 4 AND TO AUTHORIZE STAFF TO FILE THE ADDENDUM WITH THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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

WHEREAS, the Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) ("Clean Power Alliance" or "CPA") was formed on June 27, 2017;

WHEREAS, Public Utilities Code Section 366.2 requires that before commencing a community choice aggregation program, Clean Power Alliance first must prepare and adopt an Implementation Plan to be filed with the California Public Utilities Commission;

WHEREAS, Public Utilities Code Section 366.2 requires any subsequent changes to the Implementation Plan be considered and adopted at a duly notice public hearing;

WHEREAS, the Clean Power Alliance Implementation Plan and Statement of Intent was considered and adopted by the Clean Power Alliance Board of Directors on August 4, 2017 at a duly noticed public hearing;

WHEREAS, the Clean Power Alliance Implementation Plan Addendum No. 1 was considered and adopted by the Clean Power Alliance Board of Directors on December 19, 2017 at a duly noticed public hearing;

WHEREAS, the Clean Power Alliance Implementation Plan Addendum No. 2 was considered and adopted by the Clean Power Alliance Board of Directors on March 1, 2018 at a duly noticed public hearing;

WHEREAS, the Clean Power Alliance Implementation Plan Addendum No. 3 was considered and adopted by the Clean Power Alliance Board of Directors on December 13, 2018 at a duly noticed public hearing; and,

WHEREAS, the cities of Hermosa Beach, Monrovia, and Santa Paula (individually, "City"; collectively, "Cities") requested to be considered for membership in CPA so that customers in those jurisdictions can begin receiving service from CPA in 2024;

WHEREAS, each City has considered and adopted an ordinance to join CPA;
WHEREAS, CPA desires to admit the Cities for membership;

WHEREAS, the Clean Power Alliance of Southern California Implementation Plan Addendum No. 4 to authorize the Cities to join CPA was presented to the Clean Power Alliance Board of Directors at a duly noticed public hearing for its consideration and adoption.

NOW THEREFORE HAVING CONSIDERED ADDENDUM NO. 4 TO THE IMPLEMENTATION PLAN AT A DULY NOTICED PUBLIC HEARING, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA:

1. Addendum No. 4 to the Implementation Plan of Clean Power Alliance is approved.

2. Authorization of Clean Power Alliance staff to submit implementation Plan Addendum No. 4, as presented, or in a substantially similar form, to the California Public Utilities Commission (CPUC) on or before December 31, 2022, is approved.

3. Each City shall be admitted as members of the Clean Power Alliance 30 days after both of the following occur: (a) the CPUC’s certification of and issuance, if any, of findings on Addendum No. 4 to the Implementation Plan and (b) the satisfaction of any other conditions that the Board may establish.

APPROVED AND ADOPTED this ____ day of ___________ 2022.

__________________________________________
Julian Gold, Chair

ATTEST:

__________________________________________
Gabriela Monzon, Secretary
Clean Power Alliance Implementation Plan Addendum No. 4

To access this document, please click here.
RECOMMENDATION

Approve three long-term Renewable Power Purchase Agreements and authorize the Chief Executive Officer to execute the agreements:

a. 16-year Second Amended and Restated PPA for 233 MW of solar and 132 MW of storage with Arlington Energy Center II, LLC (Arlington)

b. 20-year PPA for 18 MW of incremental geothermal resource with Geysers Power Company, LLC (Geysers Incremental)

c. 10.5-year PPA for 100 MW of existing geothermal resource with Geysers Power Company, LLC (Geysers Existing)

BACKGROUND

Mid-Term Reliability Compliance

In June 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) (MTR Decision), which ordered CPA to procure a total of 679 MW of new reliable capacity between 2023-2026. This procurement is intended to address California’s need for new resources on the grid amid the planned retirement of fossil fuel resources and the Diablo Canyon nuclear power plant in the 2023-2026 timeframe.¹

¹ The 5-year extension of the Diablo Canyon nuclear power plant does not change the CPUC Decision’s ordered procurement.
CPA’s MTR-compliant procurement mandate limits CPA’s procurement to three different qualifying technologies:

1. Conventional renewables plus storage or standalone storage, which must come online by June 1, 2025, with interim requirements for June 1, 2023 and June 1, 2024.
2. Baseload\(^2\) renewables (e.g. geothermal or biomass), which must come online by June 1, 2026
3. Long-duration storage (8+ hours of duration), which must come online by June 1, 2026

In addition to the MTR compliance requirements, due to California’s shortage of Resource Adequacy (RA) resources and planned restructuring of the RA program to require hour-by-hour capacity contracts where baseload resources like geothermal will be important, CPA is also seeking strategic opportunities to procure resources that have high RA value.

A summary of the projects for which staff is seeking Board approval at today’s Board meeting is provided below:

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<td>20 years</td>
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<td>6/1/2027</td>
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<td>Long-Term RA</td>
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For all three PPAs, CPA retained Todd Larsen with Clean Energy Counsel to represent CPA and its interests in the negotiation. Mr. Larsen represented CPA in the prior amendments to the Arlington project. Mr. Larsen’s work was overseen by CPA’s General Counsel.

\(^2\) Baseload energy is energy that can be produced at an essentially constant rate and run continuously.
ARLINGTON
Located near the City of Blythe within unincorporated Riverside County, CA, Arlington is a solar plus storage project developed by NextEra. The project is broken into four phases of which CPA is the buyer of all phases. In the first phase, 100 MW of solar came online on March 21, 2022. In the second phase, 132 MW of storage came online on August 21, 2022. In the third phase, 40 MW of solar will come online on June 1, 2023. In the fourth and final phase, subject to Board approval of the Amendment, 93 MW of solar will come online on December 1, 2023, making the full facility capacity 233 MW of solar and 132 MW of storage.

On June 28, 2019, the Board approved the original Arlington PPA for the output of a 233 MW solar photovoltaic facility to come online by October 1, 2022. On October 1, 2020, the Board approved a first amended and restated PPA to add a 132 MW storage facility to the solar facility. Due to significant impacts to the project’s construction schedule related to energy market challenges, including several supply chain disruptions, on July 7th, 2022, the Board approved an amendment which delayed the Commercial Operation Date to June 1, 2023 and reduced the overall facility size to 140 MW solar plus 120 MW storage, down from the original project size of 233 MW solar and 132 MW storage. This amendment also included a right of first offer (ROFO) on the remaining 93 MW solar and 12 MW storage originally contracted to CPA.

In September 2022, Arlington provided an offer to CPA for this capacity at a new price, and on September 28, 2022, the Energy Planning & Resources Committee approved staff to enter into negotiations with Arlington for this addition ROFO-based capacity.

A quantitative evaluation of the Arlington offer showed that it has a positive net present value, in other words, its forecasted revenues are greater than forecasted costs. The Arlington offer was also compared to offers in the PPA Refresh Process and was found

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3 The PPA was further amended in June 2022 (First Amendment) to reflect a change to the management of meter data. This was a non-material, administrative amendment.
to be the second-highest value offer. The offer was also compared to offers into the 2022 Midterm Reliability RFO and found to be competitive with current market pricing.

**GEYSERS**

To comply with the MTR Decision, CPA launched its 2021 Mid-term Reliability (MTR) Request for Offers (RFO) on September 29, 2021, with bids due on November 10, 2021. CPA was able to successfully contract with one geothermal project from this RFO with the Board approval of the 33 MW Cape Station geothermal project on September 1, 2022. Subsequently, CPA launched its 2022 MTR RFO on August 1, 2022, with bids due on September 9, 2022. No geothermal resources bid into this RFO.

On July 14, 2022, staff presented a time-sensitive bilateral opportunity to a Review Team consisting of members of the Energy Committee and senior staff to secure a 20-year Power Purchase Agreement (PPA) for an incremental 18 MW of capacity (Incremental Geysers) and a 10-year PPA for 100 MW of existing capacity (Existing Geysers) at the Geysers facility. The developer is Calpine. The Existing Geysers PPA capacity is part of the larger approximately 700 MW Geysers geothermal complex. Calpine intends to add 25 MW of incremental capacity at the complex, CPA will purchase 18 MW of the capacity in the Incremental Geysers PPA and another Community Choice Aggregator will purchase the remaining 7 MW of capacity.

On July 27, 2022, the Energy Committee approved staff proceeding with bilateral negotiations, consistent with the Review Team’s recommendation. Staff has completed negotiations and is presenting and requesting approval of two Geysers PPAs. A more detailed description of the Geysers contracts and evaluation criteria are included in Exhibit A.

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4 Long-term bilateral awards are consistent with CPA’s Energy Risk Management Policy.
RATIONAL
All three contracts presented for approval today are high value offers, will help meet CPA’s compliance requirements, and are very low risk from a development perspective, as described further below:

- Arlington’s incremental 93 MW of solar and 12 MW of storage are competitively priced compared to offers recently received in the 2022 MTR RFO. In addition, the incremental 12 MW of storage is already constructed and will contribute to CPA’s 2023 MTR capacity requirements.

- The Incremental Geysers project will contribute 18 MW towards CPA’s MTR compliance requirements for Baseload Renewable resources. Opportunities for new geothermal resources are constrained due to resource-dependent siting potential (most geothermal resource are located outside of CAISO) and lack of transmission capacity into CAISO. The Incremental Geysers project is low-risk given the already proven geothermal resource at The Geysers, existing generation and transmission infrastructure, Calpine’s development track record, and the project location within CAISO.

- The Existing Geysers capacity is not incremental and will not count towards CPA’s Midterm Reliability compliance requirements but will provide long-term renewable energy and baseload capacity and contribute to CPA’s future compliance requirements for Resource Adequacy.

ENVIRONMENTAL REVIEW
Arlington has already secured all necessary permits for the construction and operation of the facility. The Existing Geysers project has previously received all necessary approvals. Calpine has completed CEQA review and obtained a Use Permit for the Incremental Geysers area where the new drilling activity and gathering system construction will take place.
CPA would have no role, jurisdiction, or authority whatsoever with respect to CEQA review or project approval, if such review or approval were required for the Incremental Geysers projects.

**ATTACHMENTS**
1. Exhibit A: Project Description – Geysers
2. Mid-Term Reliability Renewable Power Purchase Agreement Presentation
3. Second Amended and Restated Renewable Power Purchase Agreement with Arlington Energy Center II, LLC
4. Renewable Power Purchase Agreement with Geysers Power Company, LLC (Existing 100MW) *(REVISED - REDLINES INCLUDED IN ATTACHMENT)*
5. Renewable Power Purchase Agreement with Geysers Power Company, LLC (Incremental 18MW) *(REVISED - REDLINES INCLUDED IN ATTACHMENT)*

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5 Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.
EXHIBIT A: PROJECT DESCRIPTION - GEYSERS

Project Overview
Geysers is an existing plant located on 45 square miles along the Sonoma and Lake County border. It is the largest complex of geothermal power plants in the world. Naturally occurring steam field reservoirs below the earth’s surface are harnessed by Geysers to generate renewable, geothermal energy. The Geysers complex is comprised of 13 power plants with a net generating capacity of about 725 MW. CPA has a Board-approved PPA for a 50 MW portion of this overall facility, which is already online and serving CPA’s customer demand.

The Existing Geysers PPA is for 100 MW with a contract start date of June 1, 2027. The project will deliver energy to CPA at CAISO’s NP-15 trading hub. Site control and permitting has been fully secured for the entirety of the proposed delivery term.

The Incremental Geysers PPA is for 18 MW. Geysers will begin delivering incremental capacity in the third quarter of 2024 with additional capacity coming online in phases until the full incremental capacity is delivered on June 1, 2026.

Under both the Existing and Incremental Geysers PPAs, CPA pays for the output of the geothermal energy generation of the project at a fixed-price rate per MWh with no escalation for the full term of the contract and CPA is entitled to all product attributes from that generation, including energy and renewable energy credits (RECs). CPA pays for the resource adequacy benefits at a fixed-price monthly rate per kW-month with no escalation for the full term of the contract.

Developer
Geysers is an indirect, wholly owned subsidiary of Calpine. Calpine is a full-service energy company that develops power generation, owns, and operates a fleet of natural gas and geothermal assets, and sells both wholesale and retail throughout the United States. Other customers of the Geysers facility include CleanPowerSF, Sonoma Clean
Power, Marin Clean Energy, Pioneer Community Energy, and Southern California Edison. Calpine Energy Solutions, a separate subsidiary of Calpine, performs billing and call-center services for CPA.

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

**Value**
The Incremental Geysers PPA pricing reflects the scarcity of incremental geothermal resources available to meet the CPUC’s procurement order. The Incremental Geysers offer price was compared to a 30-year bilateral offer for incremental geothermal capacity in the Imperial Valley; the 30-year offer was more expensive and higher risk than the Incremental Geysers project.

The existing Geysers PPA pricing is in line with current market pricing for geothermal resources and the PPA has a positive value, in other words, its forecasted revenues are greater than forecasted costs.

A publicly available benchmark for geothermal pricing does not exist.

**Development Score**
The Existing Geysers project ranks High as it is an existing project and online, and therefore not subject to development or construction risks. The Incremental Geysers project also ranks High as it is an addition to an existing project, site control has been obtained and the new capacity will utilize existing interconnection and transmission infrastructure.
Workforce Development
Both projects rank Medium. Calpine estimates that the Incremental Geysers project will create approximately 72 construction jobs. Calpine is pursuing a Project Labor Agreement for gathering systems construction. However, trade availability for geothermal well drilling, rare in California, is uncertain; union labor and/or prevailing wages will be offered on a trade-by-trade basis. The Existing Geysers project will not create any construction jobs, however, approximately 250 people are employed at the Geysers on a full-time basis and local residents fill the majority of the independent contract jobs, which average another 150 full time positions.

Environmental Stewardship
The project ranks High as its footprint is on a developed area. Additionally, the continued use of the area via the contract with CPA constitutes repurposing of already developed land. Further, Geysers utilizes wastewater from Lake County and the City of Santa Rosa to replenish and maintain pressure at the geothermal reservoir. The Incremental Geysers project also ranks High as it is not located in an environmental avoidance area and will be constructed on previously disturbed land.

Benefits to Disadvantaged Communities
Both projects rank Neutral as neither is located within a DAC and neither will have negative impacts to any DAC.

Project Location
Both projects rank Medium as each is located within California but not within Los Angeles or Ventura County.
Item 10 – MTR PPAs

December 1, 2022
CPA is seeking Board approval of three long-term Renewable Power Purchase Agreements (PPAs) at today’s meeting:

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Capacity</th>
<th>Commercial Operation Date</th>
<th>Contract Length</th>
<th>Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arlington</td>
<td>Solar + Storage</td>
<td>93 MW for a total of 233 MW Solar / 12 MW for a total of 132 MW Storage</td>
<td>12/1/2023</td>
<td>16 Years</td>
<td>MTR Conventional</td>
</tr>
<tr>
<td>Geysers</td>
<td>Geothermal</td>
<td>18 MW</td>
<td>6/1/2026</td>
<td>20 Years</td>
<td>MTR Baseload</td>
</tr>
<tr>
<td>Incremental</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Existing Geysers</td>
<td>Geothermal</td>
<td>100 MW</td>
<td>6/1/2027</td>
<td>10.5 Years</td>
<td>Long-Term RA</td>
</tr>
</tbody>
</table>
Agenda

- Background
- Project Summary – Arlington
- Project Summary - Geysers
- Action Requested
Background
Reliability Needs

Since 2020, the California grid has experienced a shortage of reliable capacity, resulting in increased reliability events, high Resource Adequacy (RA) prices, and general RA scarcity.

In response to this shortage, 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:

<table>
<thead>
<tr>
<th>Resource Type</th>
<th>Incremental MW Online By</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2023</td>
</tr>
<tr>
<td>Reliable Capacity (General)</td>
<td>118</td>
</tr>
<tr>
<td>Baseload Renewables</td>
<td></td>
</tr>
<tr>
<td>Long-Duration Storage</td>
<td></td>
</tr>
</tbody>
</table>

In addition, a significant restructuring of the RA program is underway at the CPUC to ensure the program appropriately addresses reliability in the context of decarbonized grids, which is expected to take effect in 2025.

The three contracts discussed today will help CPA achieve its Mid-Term Reliability (MTR) compliance targets.
Project Overview - Arlington
Arlington is a 233 MW solar + 132 MW storage project in Blythe, CA, contracted with CPA

In June 2019, the Board approved a PPA for 233 MW of solar with a commercial online date (COD) of October 1, 2022. In October 2020, Board approved an amended and restated PPA to add 133 MW of storage to the existing solar.

Due to a number of industry-wide challenges affecting the renewable energy industry (e.g., supply chain, rising financing costs and commodity prices), the Board approved an amendment to the PPA on July 7, 2022 (July Amendment), agreeing to reduce the project size to 140 MW solar and 120 MW storage, with a new online date of June 1, 2023.

The July Amendment included a right of first offer (ROFO) on the remaining 93 MW solar and 12 MW storage originally contracted to CPA. Arlington provided an offer to CPA for this capacity at an updated price in September 2022.

On September 28, 2022, the Energy Committee approved CPA proceeding with negotiations for the incremental 93 MW solar and 12 MW of storage capacity at Arlington.
Recommendation

- Staff recommends approval of the Second Amended and Restated Arlington PPA for 93 MW of solar and 12 MW of storage for an Arlington project total of 233 MW of solar and 132 MW of storage.
- The 132 MW of storage is currently built; the full 233 MW of solar is scheduled to come online on 12/1/2023.

Rationale

- The incremental capacity will count towards CPA’s Midterm Reliability compliance in 2023.
- The quantitative evaluation of the Arlington offer shows a positive NPV and is priced competitively compared to offers that CPA received in its 2022 Mid-Term Reliability RFO.
- The incremental capacity is highly de-risked compared to another new-build resource.
Project Overview - Geysers
In September 2021 and August 2022, CPA launched its 2021 and 2022 Midterm Reliability (MTR) RFOs to secure baseload/firm renewable energy to fill its compliance requirement.

Baseload offers into the 2021 MTR RFO were limited, and no geothermal resources bid into the 2022 MTR RFO.

Opportunities for new geothermal resources are limited due to resource-dependent siting potential (mostly outside of CAISO or out of state) and lack of transmission capacity into CAISO.

On July 14, 2022, staff presented an opportunity to a RFO Review Team consisting of members of the Energy Committee and senior staff to secure a 20-year PPA for an incremental 18 MW of capacity (Incremental Geysers) and a 10-year* PPA for 100 MW of existing capacity (Existing Geysers) at the Geysers Facility.

On July 27, 2022, the Energy Committee approved CPA entering negotiations with Calpine for the bilateral Geysers Incremental and Existing offers.

CPA currently has a long-term PPA with 50 MW of the Geysers facility, which is operating and serving CPA’s load.

*CPA agreed to extend the contract to 10.5 years to allow the contract to run to the end of the calendar year.
**Incremental Geysers**

**Project Overview**
- 18 MW geothermal facility
- Located at the Geysers geothermal complex in Sonoma and Lake Counties, CA
- New build project with a September 1, 2026 online date
- Developer: Geysers Power Company, LLC, an indirect wholly owned subsidiary of Calpine
- This contract is pending approval from Calpine's board and is expected to be executed in January 2023

**Rationale/Recommendation**
- Will count towards CPA’s Midterm Reliability Compliance for baseload renewables
- Opportunities for new geothermal resources are scarce
- Low-risk given Geysers' prior track record of development at this location and existing generation and transmission infrastructure
- **Recommendation:** Staff recommends approval of the Incremental Geysers PPA

**Evaluation Summary**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>Medium</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>High</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>Neutral</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Existing Geysers

*Project Overview*

- 100 MW portion of the existing Geysers facility
- Located at the Geysers geothermal complex in Sonoma and Lake Counties, CA
- June 1, 2027 contract commencement date
- Developer: Geysers Power Company, LLC, an indirect wholly owned subsidiary of Calpine
- This contract is pending approval from Calpine’s board and is expected to be executed in January 2023

*Rationale/Recommendation*

- Will not count towards CPA’s Midterm Reliability Compliance but will provide long-term renewable energy and baseload capacity
- Will contribute to CPA’s future compliance requirements for RA and is expected to be highly valuable under the new RA framework
- Quantitative evaluation shows a positive NPV
- **Recommendation:** Staff recommends approval of the Existing Geysers PPA

**Evaluation Summary**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>Medium</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>High</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>Neutral</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Action Requested
Action Requested

Approval of the (1) Arlington Second Amended and Restated PPA, (2) Incremental Geysers PPA, and (3) Existing Geysers PPA
RENOWNABLE POWER PURCHASE AGREEMENT

COVER SHEET

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

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

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

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

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

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

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

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>Complete</td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Financial Close</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>Complete</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>Complete</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission)</td>
<td>Complete</td>
</tr>
<tr>
<td>Milestone</td>
<td>Expected Date for Completion</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>Provider)</td>
<td></td>
</tr>
<tr>
<td>Expected Interim Commercial Operation Date</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Storage CAISO Commercial Operation (pursuant to CAISO’s Commercial Operation for Markets)</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Storage Commercial Operation Date</td>
<td>Complete</td>
</tr>
<tr>
<td>Expected Initial Full Commercial Operation Date (for the Subject 40 MW PV)*</td>
<td>June 1, 2023</td>
</tr>
<tr>
<td>Expected Full Commercial Operation Date (for the Additional PV Capacity)*</td>
<td>December 1, 2023</td>
</tr>
</tbody>
</table>

* Seller may elect to achieve Commercial Operation for the Subject 40 MW PV pursuant to the CAISO’s Commercial Operation for Markets methodology. Seller may also elect to achieve Commercial Operation, whether under the Agreement or the CAISO Tariff as applicable, for the Additional PV Capacity in two (2) separate MW quantities on two (2) separate dates pursuant to the CAISO’s Commercial Operation for Markets methodology for each of the Initial Full Commercial Operation Date and Full Commercial Operation Date.

**Delivery Term:** Sixteen (16) Contract Years, as further defined in Section 1.1.

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2022</td>
<td>17,372</td>
</tr>
<tr>
<td>February 2022</td>
<td>19,489</td>
</tr>
<tr>
<td>March 2022</td>
<td>27,300</td>
</tr>
<tr>
<td>April 2022</td>
<td>29,841</td>
</tr>
<tr>
<td>May 2022</td>
<td>33,329</td>
</tr>
<tr>
<td>June 2022</td>
<td>33,275</td>
</tr>
<tr>
<td>Month</td>
<td>Quantity</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------</td>
</tr>
<tr>
<td>July 2022</td>
<td>31,295</td>
</tr>
<tr>
<td>August 2022</td>
<td>29,875</td>
</tr>
<tr>
<td>September 2022</td>
<td>26,662</td>
</tr>
<tr>
<td>October 2022</td>
<td>23,600</td>
</tr>
<tr>
<td>November 2022</td>
<td>18,092</td>
</tr>
<tr>
<td>December 2022</td>
<td>15,765</td>
</tr>
<tr>
<td>January 2023</td>
<td>16,586</td>
</tr>
<tr>
<td>February 2023</td>
<td>18,618</td>
</tr>
<tr>
<td>March 2023</td>
<td>26,395</td>
</tr>
<tr>
<td>April 2023</td>
<td>29,049</td>
</tr>
<tr>
<td>May 2023</td>
<td>32,515</td>
</tr>
<tr>
<td>June 2023</td>
<td>45,647</td>
</tr>
<tr>
<td>July 2023</td>
<td>42,844</td>
</tr>
<tr>
<td>August 2023</td>
<td>40,866</td>
</tr>
<tr>
<td>September 2023</td>
<td>36,545</td>
</tr>
<tr>
<td>October 2023</td>
<td>32,433</td>
</tr>
<tr>
<td>November 2023</td>
<td>24,631</td>
</tr>
</tbody>
</table>

**Full Facility - Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>718,220</td>
</tr>
<tr>
<td>2</td>
<td>718,220</td>
</tr>
<tr>
<td>3</td>
<td>718,220</td>
</tr>
<tr>
<td>4</td>
<td>718,220</td>
</tr>
<tr>
<td>Contract Year</td>
<td>Guaranteed Storage Efficiency Rate</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

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

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

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

**Guaranteed Initial Full PV Capacity:** 140 MW of PV capacity

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

The Renewable Rate:

The Renewable Rate shall be the following for the Interim Facility Contract Period:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Facility Contract Period</td>
<td>$\text{$/MWh (flat) with no escalation}\</td>
</tr>
</tbody>
</table>

The Renewable Rate shall be the following commencing on the Full Commercial Operation Date:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 16</td>
<td>$\text{$/MWh* (flat) with no escalation}\</td>
</tr>
</tbody>
</table>
* Subject to possible adjustment in accordance with Section 5(a) of Exhibit B.

The Storage Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting on the Storage Commercial Operation Date and Contract Years 1 – 16</td>
<td>$[blank]/kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>

**Product**

- ☑ PV Energy
- ☑ Discharging Energy
- ☑ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - ☑ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☑ Installed Storage Capacity and Effective Storage Capacity

**Ancillary Services**

- ☑ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☑ Full Capacity Deliverability Status
    - a) RA Guarantee Date: Interim Commercial Operation Date

**Scheduling Coordinator:** Buyer

**Security and Guarantor**

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

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

Guarantor: NextEra Energy Capital Holdings, Inc.
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</thead>
<tbody>
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<td>........................................................................</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
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SECOND AMENDED AND RESTATED
RENEWABLE POWER PURCHASE AGREEMENT

This Second Amended and Restated Renewable Power Purchase Agreement ("Agreement") is entered into as of __________, 2022 (the "Execution Date") and effective as of October 2, 2020 (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Power Purchase and Sale Agreement dated as of July 1, 2019 (the "Original PPA"), that certain Amended and Restated Renewable Power Purchase Agreement dated as of October 2, 2020 (the "First A&R PPA"), that certain First Amendment to Renewable Power Purchase Agreement dated as of June 15, 2022 (the "First Amendment"), that certain Second Amendment to Power Purchase Agreement dated as of July 8, 2022 (the "Second Amendment"), and that certain Third Amendment to Power Purchase Agreement dated as of October 31, 2022 (the "Third Amendment", and together with the Original PPA, the First A&R PPA, the First Amendment, and the Second Amendment, the "Prior PPA"), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Prior PPA, the Product (as defined in the Prior PPA);

WHEREAS, Interim Commercial Operation was achieved and the Delivery Term commenced on March 21, 2022, Storage CAISO Commercial Operation was achieved on August 15, 2022, and Storage Commercial Operation was achieved on August 21, 2022;

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

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

ARTICLE 1
DEFINITIONS

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

"AC" means alternating current.

"Accepted Compliance Costs" has the meaning set forth in Section 3.12.

"Additional PV Capacity" means the last 93 MW AC portion of the Full Facility (i.e., the portion of the Full Facility comprised of the last 141 – 233 MW AC).
“Adjusted Energy Production” has the meaning set forth in Exhibit G.

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

“Additional Facility” has the meaning set forth in Section 4.4(b).

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

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

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

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

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

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

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

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

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

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

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

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

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

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

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

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

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility:
(i) not having submitted a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

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

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

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

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

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

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

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

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

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

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved metering plan including a SQMD Plan, 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 Energy (adjusted for Electrical Losses), Charging Energy, and Discharging Energy.

“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 COM COD Approval” means the approval email or other documentation sent
by CAISO approving the commercial operation of constructed, installed, and tested phases of
megawatts under CAISO’s COM process, which may take the form of an email from CAISO
Resource Implementation Management System (RIMS) titled similar to “Notification of
Commercial Operation (COD)” or “Notification of Commercial Operation for Markets (COM)”.

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

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

“CAISO Resource ID” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Commercial Operation for Markets” or “COM” has the meaning provided to it in the ‘CAISO’s Business Practice Manual for Generator Management’ revised May 5, 2022, as the same may be amended or modified from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Curtailment Order” means any of the following:

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

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

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.
“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Facility Energy” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter; provided, in no event shall the Facility Energy in any month exceed the sum of PV Energy and Discharging Energy reported by Seller for such month pursuant to the SMQD Plan, if applicable.

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

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

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

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

“First A&R PPA” has the meaning set forth in the Recitals.

“First Amendment” has the meaning set forth in the Recitals.

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

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

“Forecasted Product” has the meaning set forth in Section 4.3(b).
“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

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

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

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

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

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

“Full Facility” means the 233 MW AC solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver photovoltaic Energy to the Delivery Point.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.
“GFCOD Development Cure Period Claims” are identified in Exhibit V.

“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, however entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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

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

“Green-e Certification” or “Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard by Buyer after delivery by Seller of such Green Attributes to Buyer.

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

“Green-e Tracking Attestation” means that certain Green-e Energy Attestation Form, as described in the Green-e Energy National Standard.

“Guaranteed Capacity” means the sum of (x) the Guaranteed Full PV Capacity and (y) the Guaranteed Storage Capacity.
“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended pursuant to Exhibit B.

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

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

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

“Guaranteed Full Commercial Operation Date” or “GFCOD” has the meaning set forth in Exhibit B.

“Guaranteed Initial Full Commercial Operation Date” has the meaning set forth in Exhibit B.

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

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

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

“Guaranteed Initial Full PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that Seller commits to install by the Guaranteed Initial Full Commercial Operation Date.

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

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric Energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer. If ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.
“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

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

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

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

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

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

“**Initial Full Facility**” means the portion of the Full Facility comprised of the initial Installed Capacity of one hundred (100) MW AC as of the Interim Commercial Operation Date plus the Subject 40 MW PV (i.e., the portion of the Full Facility comprising up to 140 MW AC of the Guaranteed Initial Full PV Capacity).

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

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

“**Installed PV Capacity**” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Interim Commercial Operation, Initial Full Commercial Operation, or Full Commercial Operation, as applicable, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“**Installed Storage Capacity**” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

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

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

“**Interconnection Capacity Limit**” means the maximum instantaneous amount of Energy that can be delivered to the Delivery Point, in the amount of 269 MW.
“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

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

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

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

“Interim Facility” means the initial one hundred (100) MW AC portion of the Full Facility.

“Interim Facility Contract Period” means the period of time commencing on the Interim Commercial Operation Date and continuing until the occurrence of the Full Commercial Operation Date.

“Interim Guaranteed Energy Production” has the meaning set forth in Section 4.7(c).

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

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“ITC Recapture Period” means the period beginning on the Effective Date and ending five (5) years and three (3) months after the Storage Commercial Operation Date.


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

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

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

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

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

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

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

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

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

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

“Master Data File” has the meaning set forth in the CAISO Tariff.

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

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

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

“Monthly SQMD Charge” has the meaning set forth in Section 4.1(a).
“Moody’s” means Moody’s Investors Service, Inc., or its successor.

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

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

“NEER” means NextEra Energy Resources, LLC.

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

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

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

“Non-Buyer Dispatch” means a dispatch by Seller pursuant to a Seller Initiated Test.

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

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

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

“Original PPA” has the meaning in the Recitals.

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

“Performance Measurement Period” means each two (2) full Contract Year period beginning on the Full Commercial Operation Date.

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

“Permitted Transfer” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; provided (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller Security requirements;
(b) A Change of Control of Ultimate Parent;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NEER or Ultimate Parent; (ii) all or substantially all of NEER’s or Ultimate Parent’s renewable energy generation portfolio; or (iii) all or substantially all of NEER’s or Ultimate Parent’s solar generation and/or energy storage portfolio; provided, that in the case of each of (i), (ii) and (iii): (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller Security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a qualified operator.

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

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; provided that if ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply; and

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

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

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

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

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

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

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

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

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

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

“Portfolio Financing” means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

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

“Prior PPA” has the meaning in the Recitals.

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

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

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

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.

“PTC Rate” means the then-current rate of the PTC (per MWh) on an After-Tax Basis as set forth in applicable Internal Revenue Service guidance.

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

“PV Energy” means that portion of Energy that is delivered directly from the Generating Facility to the Delivery Point and is not Discharging Energy.

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

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

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

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

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

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

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

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

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.
“Remedial Action Plan” has the meaning set forth in Section 2.6.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

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

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

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

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

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

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

“ROFR Offer” has the meaning set forth in Section 10.5(a).

“RPS Energy” has the meaning set forth in Section 3.10(b).
“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

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

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

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

“Second Amendment” has the meaning set forth in the Recitals.

“Second Amendment Effective Date” means July 8, 2022.

“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.

“Settlement Quality Meter Data” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.
“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

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

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

“SOC” or “State of Charge” means the level of charge of the Storage Facility relative to its maximum capacity.

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

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“SQMD Reporting” has the meaning set forth in Section 4.1(a).

“Station Use” means:

(a) The Energy produced or discharged by the Facility (and not otherwise included in the Efficiency Rate) that is used within the Facility to power information technology, telecommunications, lights, motors, temperature control systems, facility control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“Storage Capability” has the meaning in Exhibit P.

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

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

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.
“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

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

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

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

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

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

“Storage Facility Loss Factor” shall be the greater of (i) the Guaranteed Efficiency Rate set forth on the Cover Sheet, or (ii) the percentage calculated by dividing Discharging Energy in the applicable month of the Delivery Term by Charging Energy in the same month of the Delivery Term.

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

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit R.

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

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

“Stored Energy Level” means, at a particular time, the amount of electric Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.
“Subject 40 MW PV” means the forty (40) MW AC of the Facility, which is in addition to the initial installed capacity of one hundred (100) MW AC as of the Interim Commercial Operation Date (i.e., the portion of the Full Facility comprised of the initial 101 – 140 MW AC of the Guaranteed Initial Full PV Capacity).

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

“Test Energy” means with respect to (1) the Interim Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Interim Commercial Operation Date; (2) the Initial Full Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO from the Subject 40 MW PV and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid for the Subject 40 MW PV and (b) ending upon the occurrence of the Initial Full Commercial Operation Date, and (3) the Full Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO from the Full Facility and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid for the Full Facility and (b) ending upon the occurrence of the Full Commercial Operation Date, as applicable.

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

“Third Amendment” has the meaning set forth in the Recitals.

“Third Party Offer” has the meaning set forth in Section 10.5(a).
“Third Party Transaction” has the meaning set forth in Section 10.4.

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

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

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

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


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

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

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

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

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

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

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

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

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

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**
(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“Contract Term”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2 for the Interim Facility, Section 2.3 for the Storage Facility, Section 2.4 for the Full Facility, and Section 2.7 for the Initial Full Facility.

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

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Interim Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

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

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

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

(h) Seller has delivered the Performance Security for the Guaranteed Capacity of the Interim Facility to Buyer in accordance with Section 8.8; and

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

2.3 **Conditions Precedent to Storage Commercial Operation.** Seller shall achieve Storage Commercial Operation upon completion, to Buyer’s reasonable satisfaction, of each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Storage Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Storage Commercial Operation Date;

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Storage Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO Certification for the Storage Facility;

(d) Seller has delivered the Performance Security for the Guaranteed Capacity of the Storage Facility to Buyer in accordance with Section 8.8;

(e) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages; and

(f) Seller shall have achieved Interim Commercial Operation for Installed PV Capacity of not less than 100 MW, unless reduced in accordance with Section 5(a) of Exhibit B.

2.4 **Additional Conditions Precedent to Full Commercial Operation.**

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

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Additional PV Capacity have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO COM COD Approval for the Additional PV Capacity;
(d) Seller has received CEC Precertification of the Additional PV Capacity (and reasonably expects to receive final CEC Certification and Verification for the Full Facility in no more than one hundred eighty (180) days from the Full Commercial Operation Date);

(e) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Additional PV Capacity, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Additional PV Capacity within the WREGIS system, and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

(f) Seller has delivered the Performance Security for the Guaranteed Capacity of the Additional PV Capacity to Buyer in accordance with Section 8.8; and

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

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

2.6 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Interim Commercial Operation Date, Guaranteed Initial Full Commercial Operation Date, Guaranteed Full Commercial Operation Date, or the Guaranteed Storage Commercial Operation Date, as applicable; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Interim Commercial Operation Date, the Guaranteed Initial Full Commercial Operation Date, the Guaranteed Full Commercial Operation Date, and the Guaranteed Storage Commercial Operation Date in accordance with the
terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.7 **Additional Conditions Precedent to Initial Full Commercial Operation.**

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

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Subject 40 MW PV have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO COM COD Approval for the Subject 40 MW PV;

(d) Seller has received CEC Precertification of the Subject 40 MW PV (and reasonably expects to receive final CEC Certification and Verification for the Subject 40 MW PV in no more than one hundred eighty (180) days from the Initial Full Commercial Operation Date);

(e) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Subject 40 MW PV, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Subject 40 MW PV within the WREGIS system, and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

(f) Seller has delivered the Performance Security for the Guaranteed Capacity of the Subject 40 MW PV to Buyer in accordance with Section 8.8; and

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

**ARTICLE 3**

**PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or
associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation.
and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

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

3.6 **Test Energy.** No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy and provide a forecast in accordance with Section 4.3(b). If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2, Section 2.4, and Section 2.7 are not applicable to the Parties’ obligations under this Section 3.6.

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

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

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

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

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer:
provided further, Seller will pursue Interim Deliverability Status in the event that Seller anticipates that it will not achieve FCDS by the Expected FCDS Date. Notwithstanding the foregoing, until the Full Commercial Operation Date, Seller shall be excused from owing any RA Deficiency Amount that results from a reduction in the Facility’s NQC solely due to an insufficient amount of PV Energy being available during any period when the Facility is subject to a Charging Notice, and such insufficiency is due solely to the level or extent of insolation or is otherwise excused under this Agreement (and not due to a portion of the Facility being unavailable).

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Capacity), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the lesser of (A) the Storage Rate and (B) the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); provided, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that the amount of Replacement RA shall not, in any given twelve (12) month period, exceed ten percent (10%) of the aggregate amount of Qualifying Capacity for such twelve (12) month period, and provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

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

3.10 **Eligibility.**

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

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

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

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

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

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

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

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

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

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Interim Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D. In consideration of Buyer’s performance of its obligation to submit Settlement Quality Meter Data for the Facility, or only the Storage Facility, as applicable, to CAISO in accordance with Exhibit D (“**SQMD Reporting**”), Seller shall pay or cause to be paid to Buyer for each month for which Buyer provides SQMD Reporting an amount equal to Seller’s share of Buyer’s cost of providing such service, which amount shall be Five Hundred Dollars ($500) per CAISO Resource ID for which Buyer submits Settlement Quality Meter Data (“**Monthly SQMD Charge**”). If (a) Seller elects to withdraw its SQMD Plan for the Facility, or the Storage Facility, as applicable, and as a result Buyer no longer has an obligation to submit Settlement Quality Meter Data for the Facility, or the Storage Facility, as applicable, to CAISO in accordance with Exhibit D, or (b) the Parties mutually agree in their sole discretion to allow a third party selected by Seller to submit such Settlement Quality Meter Data to CAISO, then as of the later of (i) the date Seller provides Notice of such election to Buyer, and (ii) the effective date that any such change is approved by the CAISO (to
the extent required), Buyer shall no longer provide any such SQMD Reporting and the Monthly SQMD Charge will terminate.

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

### 4.2 Title and Risk of Loss

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

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

### 4.3 Forecasting

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

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

(b) **Monthly Forecast of Energy and Available Capacity.** No less than thirty (30) days before the first day on which Test Energy is expected to be available from the Facility, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) Energy produced by the Generating Facility, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i) - (iv) collectively referred to as the “**Forecasted Product**”), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable (“**Monthly Forecast**”).

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

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

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

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

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

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

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period: (1) at the Renewable Rate with respect to the Interim Facility; and (2) at the Renewable Rate plus the PTC Rate with respect to the Subject 40 MW PV and the Additional PV Capacity (together, the "**Additional 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 Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

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

4.5 **Energy Management.**
(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; provided, Buyer’s right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Charging Notice by providing the Facility with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice, (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), or (c) charges the Storage Facility in connection with maintenance of the Storage Facility or to achieve any Operating Restrictions (which charging shall not be a violation of the first sentence of this Section 4.5(c)), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.
(f) If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

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

4.6 Reduction in Energy Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller will provide to Buyer written schedules for Planned Outages for the Interim Facility Contract Period and for each Contract Year no later than thirty (30) days prior to the first day of the Interim Facility Contract Period and applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days’ notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Notwithstanding anything in this Agreement to the contrary, no outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

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

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

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

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

### 4.7 Guaranteed Energy Production.

(a) During the Delivery Term, Seller shall deliver to Buyer an amount of Adjusted Facility Energy equal to no less than (i) the Interim Guaranteed Energy Production (as defined below) in the Interim Performance Measurement Period and (ii) the Guaranteed Energy Production in each Performance Measurement Period.

(b) Seller shall be excused from achieving the Interim Guaranteed Energy Production during the Interim Performance Measurement Period and the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Interim Guaranteed Energy Production or the Guaranteed Energy Production, as applicable,Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (1) any Deemed Delivered Energy plus (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("Lost Output") plus (3) the amount of undelivered Energy during such Interim Performance Measurement Period or Performance Measurement Period, as applicable, with respect to which Seller has already (A) paid liquidated damages or (B) provided Replacement Product in accordance with this Section 4.7(b) and Exhibit G. If Seller fails to achieve the (i) Interim Guaranteed Energy Production during the Interim Performance Measurement Period or (ii) the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Interim Guaranteed Energy Production or the Guaranteed Energy Production during such Contract Years, (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

(c) **Interim Guaranteed Energy Production** means an amount of Adjusted Facility Energy, as measured in MWh, equal to seventy (70%) of the total aggregate amount of Expected Energy for the Interim Facility Contract Period as such Expected Energy is shown on the Cover Sheet. The amount may be adjusted, upward or downward, to the extent that the Interim
Facility Contract Period includes a partial month. For example, if the Interim Facility Contract Period begins on January 1, 2022 and ends on September 15, 2022, the Interim Guaranteed Energy Production shall be the sum of the Expected Energy for January through August, and 15/30ths of the Expected Energy for September.

(d) “Guaranteed Energy Production” means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the Performance Measurement Period.

4.8 **Storage Facility Availability; Ancillary Services.**

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

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is established in the definitions of the Storage Facility Loss Factor and Adjusted Facility Energy as applied in Section (a) of Exhibit C.

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

(d) Seller shall operate and maintain the Storage Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Operating Restrictions and the Storage Facility’s CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies, the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

4.9 **Storage Facility Testing.**

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

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

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

(c) Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any other test of the Facility (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "Seller Initiated Test".

(i) For any Seller Initiated Test other than a Storage Capacity Test, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for all Charging Energy at the [redacted] and shall be entitled to all CAISO revenues associated with a Seller Initiated Test, and all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the Facility Energy during such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Project or Site solely to the extent caused by
Buyer, its authorized agents, employees, and inspectors, during any such access.

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

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

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

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

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

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

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

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

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

(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.

4.11 Financial Statements. If requested by Buyer, and not publicly available on Ultimate Parent’s website, Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Ultimate Parent: (i) a copy of Ultimate Parent’s annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Ultimate Parent’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.
ARTICLE 5
TAXES

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

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

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

ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall have separate CAISO Approved Meters and CAISO Resource IDs for each of the Interim Facility, Additional Facility and Storage Facility. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Seller shall separately meter all Station Use. All CAISO Approved Meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then all Facility Meters, or all Storage Facility Meters, as applicable, will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable, at Seller’s sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from each meter to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO approved SQMD Plan for the Facility, or only the Storage Facility, as applicable. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.
ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price (and the PTC Rate for Deemed Delivered Energy with respect to the Subject 40 MW and the Additional PV Capacity) applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice for each month for which Buyer provides SQMD Reporting shall include a credit in the amount of the Monthly SQMD Charge owed by Seller to Buyer for such month.

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.
8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date; provided, Seller shall deliver the Development Security pertaining to the Additional PV Capacity in the amount of $5,580,000 within thirty (30) days after the Execution Date. Seller shall maintain the Development Security in full force and effect. Upon Seller’s delivery of the Performance Security for Interim Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Interim Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon Seller’s delivery of the Performance Security for Storage Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Storage Commercial Operation to Seller, less the amounts drawn
in accordance with this Agreement. Upon the earlier of (i) Seller’s delivery of the Performance Security for Initial Full Commercial Operation, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Guaranteed Capacity portion of the Development Security for Initial Full Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon the earlier of (i) Seller’s delivery of the Performance Security for Full Commercial Operation, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the remaining Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security (i) for the Guaranteed Capacity for Interim Commercial Operation to Buyer on or before the Interim Commercial Operation Date, (ii) for the Guaranteed Storage Capacity for Storage Commercial Operation to Buyer on or before the Storage Commercial Operation Date, (iii) for the Guaranteed Capacity for Initial Full Commercial Operation to Buyer on or before the Initial Full Commercial Operation Date, and (iv) for the Guaranteed Capacity for Full Commercial Operation to Buyer on or before the Full Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

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

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(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

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

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

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

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

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

ARTICLE 10
FORCE MAJEURE

10.1 Definition.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
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(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 describing the particulars of the occurrence in substantially the form set forth in Exhibit W, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event or Development Cure Period.

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal one hundred eighty
(180) days for the Guaranteed Interim Commercial Operation Date, sixty (60) days for the Guaranteed Storage Commercial Operation Date, sixty (60) days for the Guaranteed Initial Full Commercial Operation Date, or sixty (60) days for the Guaranteed Full Commercial Operation Date, and Seller has demonstrated to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Full Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; provided that, in the case of Seller as the Party electing to terminate this Agreement, for a period of two (2) years from the date of the termination of this Agreement, Seller shall not, and shall cause its Affiliates and any successors or assign to not, following such termination directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Facility Energy with any Person other than Buyer (a “Third Party Transaction”) except in compliance with the terms and conditions of Section 10.5. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

10.5 Right of First Refusal.

(a) Following a termination by Seller under Section 10.4, if Seller receives a bona fide written offer for a Third Party Transaction that Seller desires to accept (each, a “Third Party Offer”), Seller shall immediately notify Buyer in writing (the “Offer Notice”) of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third Party Transaction and the material financial and other terms and conditions of such Third Party Offer (the “Material Terms”). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third Party Offer (the “ROFR Offer”).

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the Offer Notice (the “Exercise Period”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third party offeror).
If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 10.5, at any time following the expiration of the Exercise Period, Seller may consummate the Third Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third Party Transaction is not consummated, the terms and conditions of this Section 10.5 will again apply and Seller shall not enter into any Third Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 10.5.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

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

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller to achieve (A) Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, (B) Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, (C) Initial Full Commercial Operation on or before the Guaranteed Initial Full Commercial Operation Date, or (D) Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, except as each date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

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

(iv) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Storage Cure Plan”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;
(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or Fitch or A3 by Moody’s, provided that if ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit; or

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Full Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage and Termination Payments. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.
(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Interim Commercial Operation Date, the Storage Commercial Operation Date, the Initial Full Commercial Operation Date, or the Full Commercial Operation Date, as the case may be, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then in the event of an Early Termination Date occurring before the Interim Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim Commercial Operation Date but before the Storage Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the Storage Facility as defined in the Cover Sheet and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim Commercial Operation Date but before the Full Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the portion of the Guaranteed Full PV Capacity that has not achieved either Initial Full Commercial Operation or Full Commercial Operation, each as applicable, and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit the amounts held as Development Security in connection with the Damage Payment for an Early Termination prior to the Interim Commercial Operation Date, the Storage Commercial Operation Date, the Initial Full Commercial Operation Date, or the Full Commercial Operation Date, as the case may be, and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer up to the amount of the Damage Payment will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

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

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

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

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated prior to the Full 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 such Early Termination Date, 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.

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.
11.8 **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.

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

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

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

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

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

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 14**

**ASSIGNMENT**

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit S (“**Collateral Assignment Agreement**”).

14.3 **Permitted Assignment by Seller.**

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

(i) the assignee is a Permitted Transferee;

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

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

(b) Notwithstanding anything to the contrary in Sections 14.1 and 14.3(a), Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to (1) NextEra Energy Operating Partners, LP or (2) NextEra Energy Partners, LP; if, and only if:

(i) (x) A wholly-owned indirect subsidiary of Ultimate Parent or NextEra Energy Resources, LLC or a Permitted Transferee under clause (ii) of the definition continues to operate the Facility and (y) there is no material adverse effect on the ability of Seller’s Guarantor to perform under the Performance Security;

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

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

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.
14.4 **Shared Facilities: Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("Buyer Assignee") at any time upon not less than fifteen (15) Business Days' notice by delivering a written notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit U ("Limited Assignment Agreement"), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to or greater than Baa3 from Moody's and BBB- from S&P, and if ratings by S&P and Moody's are not equivalent, the lower rating shall apply. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to accounting information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5; provided, (a) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties, and

14.6 **Permitted Transfer by Seller.** Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller gives at least thirty (30) days' prior written notice to Buyer.

**ARTICLE 15**

**DISPUTE RESOLUTION**

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

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

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

**ARTICLE 16**

**INDEMNIFICATION**

16.1 **Indemnification.**

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

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

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

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

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

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

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

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

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

(e) **Builder’s All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Interim Facility and the Full Facility prior to the Full Commercial Operation Date, builder’s all-risk insurance covering the Facility during such construction periods.
(f) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

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

**ARTICLE 18**

**CONFIDENTIAL INFORMATION**

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

Irreparable Injury; Remedies. Except as provided in Section 18.2, Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened
breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

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

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

**ARTICLE 19**

**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof (including the Prior PPA), which are of no further force or effect, except for that certain Letter Agreement between the Parties dated as of November __, 2022, which remains in full force and 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 lessee/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.
19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

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

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

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

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

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

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

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

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

ARLINGTON ENERGY CENTER II, LLC, a Delaware limited liability company
By: ____________________________
Name: __________________________
Title: ____________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
By: ____________________________
Name: __________________________
Title: ____________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Arlington Energy Center II

Site includes all or some of the following APNs: 812-130-009, 812-130-012, 812-120-002,

County: Riverside, CA

Zip Code: 92225

Latitude and Longitude: 33.6552; -114.7503

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 233 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC / 528 MWh located near the City of Blythe within unincorporated Riverside County, California. Seller may install additional inverter capacity to account for production and delivery losses.

Site Diagram
Delivery Point: PNode

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

P-node: To be established prior to the Interim Commercial Operation Date at the Colorado River Substation 220kV bus. Seller shall promptly notify Buyer following the establishment of the PNode.

Participating Transmission Owner: Southern California Edison

Additional Information: None
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

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

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. If Seller achieves Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.
2. **Commercial Operation of the Facility.**

a. **Interim Commercial Operation** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "Interim COD Certificate"), and the date Interim Commercial Operation occurs, the "Interim Commercial Operation Date".

i. Seller shall cause the Interim Commercial Operation for the Facility to occur by the Expected Interim Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "Guaranteed Interim Commercial Operation Date"). Seller shall notify Buyer that it intends to achieve Interim Commercial Operation at least sixty (60) days before the anticipated Interim Commercial Operation Date.

ii. If Seller does not achieve Interim Commercial Operation by the Guaranteed Interim Commercial Operation Date, Seller may extend the Guaranteed Interim Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

b. **Storage Commercial Operation** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "Storage COD Certificate"), and the date Storage Commercial Operation occurs, the "Storage Commercial Operation Date".

i. Seller shall cause the Storage Commercial Operation for the Facility to occur by the Expected Storage Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "Guaranteed Storage Commercial Operation Date"). Seller shall notify Buyer that it intends to achieve Storage Commercial Operation at least sixty (60) days before the anticipated Storage Commercial Operation Date.

ii. If Seller does not achieve Storage Commercial Operation by the Guaranteed Storage Commercial Operation Date, Seller may extend the Guaranteed Storage Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Storage Commercial Operation Date until the Storage Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Storage Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

Exhibit B - 2
c. “Initial Full Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.7 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “Initial Full COD Certificate”), and the date Initial Full Commercial Operation occurs, the “Initial Full Commercial Operation Date”.

i. Seller shall cause the Initial Full Commercial Operation for the Facility to occur by the Expected Initial Full Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “Guaranteed Initial Full Commercial Operation Date”). Seller shall notify Buyer that it intends to achieve Initial Full Commercial Operation at least sixty (60) days before the anticipated Initial Full Commercial Operation Date.

ii. If Seller does not achieve Initial Full Commercial Operation by the Guaranteed Initial Full Commercial Operation Date, Seller may extend the Guaranteed Initial Full Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Initial Full Commercial Operation Date until the Initial Full Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Initial Full Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

d. “Full Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.4 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “Full COD Certificate”), and the date Full Commercial Operation occurs, the “Full Commercial Operation Date”.

i. Seller shall cause the Full Commercial Operation for the Facility to occur by the Expected Full Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “Guaranteed Full Commercial Operation Date”). Seller shall notify Buyer that it intends to achieve Full Commercial Operation at least sixty (60) days before the anticipated Full Commercial Operation Date.

ii. If Seller does not achieve Full Commercial Operation by the Guaranteed Full Commercial Operation Date, Seller may extend the Guaranteed Full Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Full Commercial Operation Date until the Full Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Full Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
3. **Termination for Failure to Achieve Full Commercial Operation.** If the Interim Facility has not achieved Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the Storage Facility, and the other applicable provisions of this Agreement shall be adjusted accordingly. If the Facility has not achieved Initial Full Commercial Operation on or before the Guaranteed Initial Full Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the Initial Full Facility, and the other applicable provisions of this Agreement shall be adjusted accordingly. If the Facility has not achieved Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the portion of Capacity that has not achieved Full Commercial Operation, and the other applicable provisions of this Agreement shall be adjusted accordingly.

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

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

   b. a Force Majeure Event occurs; or

   c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, or the Guaranteed Full Commercial Operation date, as applicable, despite the exercise of diligent and commercially reasonable efforts by Seller; or

**Exhibit B - 4**
d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, the Guaranteed Initial Full Commercial Operation Date, or the Guaranteed Full Commercial Operation Date, as applicable.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed sixty (60) days for the Guaranteed Storage Commercial Operation Date, sixty (60) days for the Initial Full Commercial Operation Date, or sixty (60) days for the Guaranteed Full Commercial Operation Date, for any reason, including a Force Majeure Event. The cumulative extensions granted to the Guaranteed Storage Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred fifty (150) days for the Guaranteed Storage Commercial Operation Date, one hundred fifty (150) days for the Guaranteed Initial Full Commercial Operation Date, or one hundred fifty (150) days for the Guaranteed Full Commercial Operation Date regardless of reason. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

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

5. **Failure to Reach Guaranteed Interim/Initial Full/Full PV Capacity or Guaranteed Storage Capacity.**

   a. **Guaranteed Interim/Full PV Capacity.** If, at Interim Commercial Operation, Initial Full Commercial Operation, or Full Commercial Operation, as applicable, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Interim PV Capacity, or the Guaranteed Full PV Capacity, Seller shall have ninety (90) days after the Interim Commercial Operation Date, Initial Full Commercial Operation Date, or the Full Commercial Operation Date, as applicable, to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Interim PV Capacity, the Guaranteed Initial Full PV Capacity, or the Guaranteed Full PV Capacity, as applicable, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Interim PV Capacity, Guaranteed Initial Full PV Capacity, or Guaranteed Full PV Capacity, as applicable, by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two
Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Interim PV Capacity, Guaranteed Initial Full PV Capacity, or Guaranteed Full PV Capacity, as applicable, exceeds the Installed PV Capacity, and the applicable portions of the Agreement (including a pro rata reduction of the Renewable Rate to account for the blended rate of the shortfall in the Installed PV Capacity) shall be adjusted accordingly consistent with the Installed PV Capacity.

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

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
EXHIBIT C

COMPENSATION

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

(a) **Renewable Rate; PTC Rate.** Buyer shall pay Seller up to one hundred fifteen percent (115%) of the Expected Energy for each year of the Interim Facility Contract Period and each Contract Year the following amounts: (i) the Renewable Rate for each MWh of Adjusted Facility Energy; (ii) the Renewable Rate for each MWh of Deemed Delivered Energy from the Interim Facility; and (iii) the sum of the Renewable Rate plus the PTC Rate for each MWh of Deemed Delivered Energy from the Additional Facility.

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

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

(d) **Monthly Capacity Payment.**

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

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

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

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

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

Capacity Availability Factor = 0

(B) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = Guaranteed Storage Availability – YTD Annual Capacity Availability

(C) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = (Guaranteed Storage Availability – YTD Annual Capacity Availability) * 1.5

provided that, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.
(f) **Tax Credits.** The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

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

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

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

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

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

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

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

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
(ix) SQMD Reporting. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then for any time period covered by the CAISO-approved SQMD Plan, Seller shall provide or cause to be provided to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, or only the Storage Facility Meters, as applicable, Settlement Quality Meter Data no later than six (6) Business Days after the relevant flow date. In connection with any SQMD Plan or designation of the Facility, or only the Storage Facility, as applicable, as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller in the SQMD Plan submission and approval process and perform the obligations required by the SQMD Plan or the CAISO applicable to Scheduling Coordinators with respect to submitting Settlement Quality Meter Data to the CAISO including without limitation submitting required affirmations and attestations (if any). Buyer (as Scheduling Coordinator) shall be responsible for submitting Settlement Quality Meter Data to the CAISO using the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer as a result of Seller’s failure to provide or have provided Settlement Quality Meter Data consistent with the SQMD Plan to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator), with respect to the Facility Meters, or only the Storage Facility Meters, as applicable, within the timeframe required by this Section (ix).
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are reasonably likely to affect Seller’s Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.
### EXHIBIT F-1

**MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY**

[MW Per Hour] – [Insert Month]

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

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

MONTHLY EXPECTED GENERATING FACILITY ENERGY

[MWh Per Hour] – [Insert Month]

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – [Insert Month]

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-4
MONTHLY AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [Insert Month]

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

[Insert additional rows for each day in the month]

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

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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

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

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

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

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided, that are provided by Seller to Buyer as Replacement Product, in an amount not to exceed \( A - E \), where \( E = \text{Facility Energy} + \text{Deemed Delivered Energy} + \text{Lost Output} \).

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment shall be due if the calculation of \((A - B)\) or \((C - D)\) yields a negative number.
Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
EXHIBIT H

FORM OF INTERIM, STORAGE, INITIAL FULL, AND FULL COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The [Interim] [Storage] [Initial Full] [Full] Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the [Guaranteed Interim PV Capacity] [Guaranteed Initial Full PV Capacity] [Guaranteed Full PV Capacity].

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

4. Authorization to parallel the [Interim] Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for [Interim][Storage][Initial Full][Full] Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]____.

6. The CAISO has provided notification supporting [Interim][Storage][Initial Full][Full] Commercial Operation, which may be provided in the form of CAISO COM COD Approval, in accordance with the CAISO Tariff on _______[DATE]____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ________________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:____________________________________

Its:____________________________________

Date:______________________________

Exhibit H - 1
EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC ("Installed PV Capacity");

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “Installed Storage Capacity”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “Installed Capacity”; and

(d) The Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: ________________________________

Date: ______________________________

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EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “Effective Storage Capacity”); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ________ day of ______________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________  

Its:_____________________________  

Date:___________________________  

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EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on __________ (the "Construction Start Date"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

____________________________________________________________________
(such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: ________________________________
Its: ________________________________

Date: ________________________________
EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]
Date: [Date]
Bank Ref.: [Bank Ref.]
Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of [Date] and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile
transmittal are deemed to be the operative instrument without the need of originally signed
documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of
Credit will be duly honored if presented to the Issuer before the Expiration Date. All
correspondence and any drawings (other than those made by facsimile) hereunder are to be directed
to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby
Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing
Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account
of the Beneficiary designated in the Drawing Request.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full
force and effect with respect to any continuing balance; provided, the Available Amount shall be
reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an
amendment for a one year period (or, if such period ends on a day that is not a Business Day, until
the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each
anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next
Business Day thereafter), unless at least one hundred twenty (120) days prior to any such
Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the
address provided below that Issuer elects not to extend this Letter of Credit, in which case it will
expire on its then-current Expiration Date. No presentation made under this Letter of Credit after
such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or
agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer
relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby
Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the
“ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to
the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of
Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of
Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of
Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of
Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter,
overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a
California joint powers authority, Chief Financial Officer, 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.
[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized officer of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of [ ] (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of [ ], 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date ____________________________
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“Guarantor”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2020.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed [_____] Dollars ($[_____] ). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to
the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

1. the extension of time for the payment of any Guaranteed Amount, or
2. any amendment, modification or other alteration of the PPA, or
3. any indemnity agreement Seller may have from any party, or
4. any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
5. 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
6. the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
7. 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
8. those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of
the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and
other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor’s ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor’s parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
   
   Attn: [___]

If delivered to Guarantor, to it at
   
   Attn: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms

Exhibit L - 4
thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

Exhibit L - 5
(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By:____________________________
Printed Name:__________________
Title:____________________________

BUYER:

[_______]

By:____________________________
Printed Name:__________________
Title:____________________________

By:____________________________
Printed Name:__________________
Title:____________________________
This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated ________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.6] [3.8(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

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<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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<td>December</td>
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1. To be repeated for each unit if more than one.

---

Exhibit M - 1

Agenda Page 214
[SELLER ENTITY]

By: ________________________________
Its: ________________________________

Date: ________________________________
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>ARLINGTON ENERGY CENTER II, LLC, a Delaware limited liability company (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 700 Universe Blvd</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Juno Beach, FL 33408</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Chief Executive Officer</td>
</tr>
<tr>
<td>Phone: (561) 691-3062</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: (561) 304-5161</td>
<td>Email: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
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<tr>
<td>Attn: Business Management</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone: (561) 691-3062</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: (561) 304-5161</td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:dan.couch@nee.com">dan.couch@nee.com</a></td>
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<td>Attn:</td>
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<tr>
<td>Phone:</td>
<td>Phone: (817) 462-1509</td>
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<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
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<td>Attn:</td>
<td>Attn: Vice President, Power Supply</td>
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<td>Phone:</td>
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<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:nkeefer@cleanpoweralliance.org">nkeefer@cleanpoweralliance.org</a></td>
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<td>E-mail: <a href="mailto:dan.couch@nee.com">dan.couch@nee.com</a></td>
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<td><strong>Wire Transfer:</strong></td>
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Exhibit N - 1
| **ARLINGTON ENERGY CENTER II, LLC,**
a Delaware limited liability company (**Seller**)
| **CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,**
a California joint powers authority (**Buyer**)

**Emergency Contact:**
Attn: Renewable Operations Control Center (ROCC)
(24-hour coverage):
Phone: (561) 694-3636
Toll Free: (866) 375-3737
Fax: (561) 694-3615
EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. **Commercial Operation Storage Capacity Test(s).** Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. **Subsequent Storage Capacity Tests.** Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. **Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate.** No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

(1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “CT”. Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

(2) **Conditions Prior to Testing.**
(1) **EMS Functionality.** The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) **Communications.** The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer’s RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer’s RTU and Seller’s EMS interface and the ability to record SCADA data.

(3) **Commissioning Checklist.** Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

**PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.**

A. **Test Elements.** Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed “complete,” and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and

(2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches 100%, not to exceed five (5) hours of total charging time.

B. **Parameters.** During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

(1) Time;

(2) Net electrical energy output to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

(3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);
C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT successfully started;
2. The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
3. The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
4. Amount of time between the Storage Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
5. Amount of time between the Storage Facility’s electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
6. Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% Stored Energy Level to 100% Stored Energy Level;
7. Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% Stored Energy Level to 0% Stored Energy Level.

E. Test Conditions.

1. General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

2. Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

2. The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

3. Seller’s statement of either Seller’s acceptance of the CT or Seller’s rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the CT results or Buyer’s rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“Supplementary Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Storage Capacity and Efficiency Rate Test

• Procedure:

(1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the Storage Facility SOC.

(3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.

(4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (“Energy In”).

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility’s maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
(7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.

(8) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.

(10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity. "Energy Out" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Section III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable.

- **Test Results**

  (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter.

  (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

**B. AGC Discharge Test**

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s maximum discharging level within 1 second.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**
  
  (1) Record the Storage Facility active power level at the Facility Meter.

  (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.

  (3) Record and store the Storage Facility active power response (in seconds).

- **System end state:** The Facility will be in the on-line state and at a commanded active power level of 0 MW.

**C. AGC Charge Test**
Exhibit O - 7

Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility’s full charging level within 1 second.

System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

Procedure:

1. Record the Storage Facility active power level at the Facility Meter.
2. Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
3. Record and store the Storage Facility active power response (in seconds).

System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.

System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

Procedure:

1. Record the Storage Facility reactive power level at the Facility Meter.
2. Command the Storage Facility to follow 50 MVAR for ten (10) minutes.
3. Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.

System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

Procedure:

1. Record the Storage Facility reactive power level at the Facility Meter.
(2) Command the Storage Facility to follow -50 MVAR for ten (10) minutes.

(3) Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Commencing on the Storage Commercial Operation Date and for each applicable month of the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Storage Capacity Availability” using the formula set forth below:

Annual Storage Capacity Availability (%) = \[
\frac{1 \quad \text{Unavailable Calculation Intervals}}{\quad \text{Total YTD Calculation Intervals}}
\]

“Calculation Interval” or “C.I.” means each successive five-minute interval.

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals, where for each Calculation Interval:

\[
\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \frac{\text{A}}{\text{Effective Storage Capacity}}\right)
\]

where:

\[
\text{A} = \text{the lesser of (i) available PMAX and (ii) available Effective Storage Capacity}
\]

“Storage Capability” means the sum of (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging charging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor).

During the period from the Storage Commercial Operation Date until the Full Commercial Operation Date, in all Calculation Intervals between 4:00 p.m. and 9:00 p.m., the Storage Capability shall be modified to be the lesser of the above definition and the sum of the PV Energy and Charging Energy produced by the Facility prior to 4:00 p.m. in such day multiplied by the Efficiency Rate.

“Total YTD Calculation Intervals” means the total Calculation Intervals year-to-date in...
the applicable calendar year (commencing upon the Commercial Operation Date).

(b) The available PMAX, Effective Storage Capacity and Storage Capability in the above calculations shall be the lower of the amounts reported by (i) Seller’s real-time EMS data feed to Buyer for the Storage Facility, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10), provided that any such revised Availability Notice indicating the Storage Facility is available for the applicable Calculation Interval is submitted by Seller (a) by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, or (b) at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market. Except as otherwise provided in this Agreement, the calculations of available PMAX and Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond.) For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters is less than the Installed Storage Capacity divided by 0.95 charging and divided by 0.95 discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| File Update Date: | [XX/XX/20XX] |
| Technology: | Lithium Ion Batteries |
| Storage Unit Name: | Arlington Energy Center II |

A. Contract Capacity

| Guaranteed Storage Capacity (MW): | 132 |
| Effective Storage Capacity (MW): | 132 |

B. Total Unit Dispatchable Range Information

| Interconnect Voltage (kV): | 220 |
| Maximum Storage Level (MWh): | 528 |
| Minimum Storage Level (MWh): | 0 |
| Stored energy capability (MWh): | 528 |
| Maximum Discharge (MW): | 132 |
| Maximum Charge (MW): | 0 |
| Maximum energy throughput (BET) (MWh/yr): | [redacted] |

C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/min)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
<td>132</td>
<td>132</td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>132</td>
<td>132</td>
</tr>
</tbody>
</table>

D. Ancillary Services

| Frequency regulation is included: | Yes |
| Spin is included: | Yes |

II. GENERATING FACILITY OPERATING RESTRICTIONS

1) Maximum energy throughput of [redacted] MWh per Contract Year.

   a) Beginning at Storage Commercial Operation, this cumulative annual energy throughput will be communicated by a tag in the Real Time SCADA Points List.

Exhibit Q - 1

Agenda Page 228
2) Beginning at Storage Commercial Operation, this annual average State of Charge will be communicated by a tag in the Real Time SCADA Points List.

3) Dispatch Communications Protocols and SCADA
   a) Storage Facility Dispatch
      i) Ancillary Services
         (1) Ancillary Services dispatch will occur based on communications from CAISO to the Storage Facility Remote Intelligent Gateway (RIG).
      ii) Energy
         (1) Buyer’s Scheduling Coordinator will provide Seller access to CAISO Automated Dispatch System (ADS) to obtain dispatch operating target (DOT) MW setpoint and instruction time.
   b) Real-Time SCADA
      i) The Real-Time SCADA points list, a representation of which is provided in Exhibit 1, will be provided from the Seller to the Buyer’s Scheduling Coordinator via Remote Terminal Unit (RTU) connection.
         ii) Seller will provide and maintain CAISO real time telemetry from the Storage Facility.

III. STORAGE AND GENERATING FACILITY SCHEDULING AND NOTIFICATIONS

1) Storage Facility Scheduling
   a) Buyer will be responsible for scheduling of the Storage Facility by delivering Charging Notices and Discharging Notices to the Seller in accordance with the Agreement, including Exhibit D.

2) Forecasting of the Generating System and the Storage System
   a) Seller will provide to Buyer the (i) Annual Forecast of Energy and (ii) Monthly Forecast of Energy and Availability Capacity in accordance with Agreement Sections 4.3(a) and 4.3(b) by email.
   b) Seller will provide to Buyer’s Scheduling Coordinator the Day-Ahead Forecast in accordance with Agreement Sections 4.3(c) via email.
c) Seller will provide to Buyer’s Scheduling Coordinator the Real-Time Forecasts in accordance with Agreement Sections 4.3(d) via submitting an outage template to the Buyer’s Scheduling Coordinator, a representation of which is included within Exhibit 2.

IV. CONTACTS

Clean Power Alliance of Southern California (Buyer)
Tenaska Operations Desk (Buyer’s Scheduling Coordinator)

<table>
<thead>
<tr>
<th>Functional Area</th>
<th>Title</th>
<th>Name</th>
<th>Phone Number</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Mgt/Daily Operations</td>
<td>Asset Manager</td>
<td>Alexandra Caryotakis</td>
<td>(520) 640-7065</td>
<td><a href="mailto:saacaryotakis@cleanpoweralliance.org">saacaryotakis@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>cc: <a href="mailto:EnergyContracts@cleanpoweralliance.org">EnergyContracts@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Contract Mgt/Daily Operations</td>
<td>Director, Structured Contracts</td>
<td>John McNamara</td>
<td>(323) 640-7662</td>
<td><a href="mailto:jmcanamara@cleanpoweralliance.org">jmcanamara@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Scheduling</td>
<td>Scheduling Coordinator RT</td>
<td>Tenaska Ops Desk</td>
<td>(817) 462-1509</td>
<td><a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
</tr>
<tr>
<td>Billing</td>
<td>PM, Settlements</td>
<td>Cody Walding</td>
<td>(713) 264-5378</td>
<td><a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Scheduled Outage and Maintenance</td>
<td>Scheduled Outage and Maintenance Coordinator</td>
<td>Tenaska Outages</td>
<td></td>
<td><a href="mailto:outage@tnsk.com">outage@tnsk.com</a></td>
</tr>
<tr>
<td>Scheduled Outage and Maintenance</td>
<td>PM, Resource Optimization</td>
<td>Sean Hernandez</td>
<td>(213) 595-7950</td>
<td><a href="mailto:shernandez@cleanpoweralliance.org">shernandez@cleanpoweralliance.org</a></td>
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<td></td>
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<td>cc: <a href="mailto:Outage@cleanpoweralliance.org">Outage@cleanpoweralliance.org</a></td>
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### Arlington Energy Center II, LLC (Seller)

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<th>Email</th>
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</thead>
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<tr>
<td>Settlements</td>
<td>Sr. Manager of Accounting</td>
<td>Melanie Powers</td>
<td>561-304-5731</td>
<td><a href="mailto:NEER-Revenue-Team@nee.com">NEER-Revenue-Team@nee.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:Melanie.Powers@nee.com">Melanie.Powers@nee.com</a></td>
</tr>
<tr>
<td>Business Management Operations</td>
<td>Director, Business Management Operations</td>
<td>Emre Ergas</td>
<td>561-691-2866</td>
<td><a href="mailto:Emre.Ergas@nee.com">Emre.Ergas@nee.com</a></td>
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<tr>
<td></td>
<td></td>
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<td></td>
<td><a href="mailto:Cc:DL-NEXTERA-WEST-INTERNATIONAL-REGION@nee.com">Cc: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nee.com</a></td>
</tr>
<tr>
<td>Site</td>
<td>Site Manager</td>
<td>Josh Heveron</td>
<td>760-922-7823</td>
<td><a href="mailto:Joshua.Heveron@nee.com">Joshua.Heveron@nee.com</a></td>
</tr>
<tr>
<td>System Controls and Monitoring</td>
<td>24-hour operations center</td>
<td>Renewable Operations Control Center</td>
<td>866-375-3737</td>
<td><a href="mailto:ROCC@nee.com">ROCC@nee.com</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:Cc:NEER-SYSTEM-OPERATIONS@nee.com">Cc: NEER-SYSTEM-OPERATIONS@nee.com</a></td>
</tr>
</tbody>
</table>

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Exhibit Q - 2
## Exhibit 1: Representative Real-Time SCADA points list

<table>
<thead>
<tr>
<th>Device I/O (if applicable)</th>
<th>OrionX-TAG Name</th>
<th>Point Index</th>
<th>Protocol</th>
<th>Object</th>
<th>Variation</th>
<th>Type</th>
<th>Engineering Units</th>
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<tr>
<td>Remote Control</td>
<td></td>
<td>0</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
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<tr>
<td>Curtailment Enable Feedback</td>
<td></td>
<td>1</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>AGC Control</td>
<td></td>
<td>2</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>Plant High Side Circuit Breaker 52T2</td>
<td></td>
<td>3</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>Feeder Circuit Breaker 52F3</td>
<td></td>
<td>4</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>BESS PPC</td>
<td>BESS_CONTROLS_EL_NAME</td>
<td>5</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>Feeder Circuit Breaker 52F5</td>
<td></td>
<td>6</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
</tr>
<tr>
<td>AGC Curtailment Setpoint (Power Demand) Echo</td>
<td></td>
<td>7</td>
<td>DNP</td>
<td>1</td>
<td>2</td>
<td>Binary Input</td>
<td></td>
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<td>High Operating Limit</td>
<td></td>
<td>1</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MW</td>
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<tr>
<td>Low Operating Limit</td>
<td></td>
<td>2</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MW</td>
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<tr>
<td>High Ramp Rate Limit</td>
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<td>3</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MW/Min</td>
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<tr>
<td>Ramp Rate</td>
<td></td>
<td>4</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MW/Min</td>
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<tr>
<td>Real Power at POI</td>
<td></td>
<td>5</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MW</td>
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<td>Reactive Power at POI</td>
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<td>6</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>MVAR</td>
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<tr>
<td>MET 1 Wind Speed</td>
<td></td>
<td>7</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>m/s</td>
</tr>
<tr>
<td>MET 1 Wind Direction</td>
<td></td>
<td>8</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>Degrees</td>
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<tr>
<td>MET 1 Air Temperature</td>
<td></td>
<td>9</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>Celsius</td>
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<tr>
<td>MET 1 Module Surface Temperature</td>
<td></td>
<td>10</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>Celsius</td>
</tr>
<tr>
<td>MET 1 Barometric Pressure</td>
<td></td>
<td>11</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>mm Hg</td>
</tr>
<tr>
<td>MET 1 Relative Humidity</td>
<td></td>
<td>12</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>%</td>
</tr>
<tr>
<td>MET 1 Precipitation (Rain Rate)</td>
<td></td>
<td>13</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>mm/hr</td>
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<td>MET 1 Global Horizontal Irradiance</td>
<td></td>
<td>14</td>
<td>DNP</td>
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<td>1</td>
<td>Analog Input</td>
<td>W/m²</td>
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<td>DNP</td>
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<td>Analog Input</td>
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<tr>
<td>MET 2 Wind Speed</td>
<td></td>
<td>16</td>
<td>DNP</td>
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<td>1</td>
<td>Analog Input</td>
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<td>MET 2 Wind Direction</td>
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<td>MET 2 Air Temperature</td>
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<td>18</td>
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<td>MET 2 Barometric Pressure</td>
<td></td>
<td>20</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>mm Hg</td>
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<tr>
<td>MET 2 Relative Humidity</td>
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<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>%</td>
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<tr>
<td>MET 2 Precipitation (Rain Rate)</td>
<td></td>
<td>22</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>mm/hr</td>
</tr>
<tr>
<td>MET 3 Global Horizontal Irradiance</td>
<td></td>
<td>23</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>W/m²</td>
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<tr>
<td>MET 3 Plane of Array Irradiance</td>
<td></td>
<td>24</td>
<td>DNP</td>
<td>30</td>
<td>1</td>
<td>Analog Input</td>
<td>W/m²</td>
</tr>
</tbody>
</table>

### Additional Points

- **BESS PPC**: PLANT_HEARTBEAT (25, DNP, 30, 1, Analog Input)
- **BESS PPC**: BESS_PLANT_STATUS (26, DNP, 30, 1, Analog Input, ENUM)
- **BESS PPC**: BESS_MVAR_FB (28, DNP, 30, 1, Analog Input, MVAR)
- **BESS PPC**: BESS_CAPACITY (32, DNP, 30, 1, Analog Input, MWh)
- **BESS PPC**: SERVICE_SOC (33, DNP, 30, 1, Analog Input, %)
- **BESS PPC**: BESS_SP (34, DNP, 30, 1, Analog Input, MW)
- **BESS PPC**: CAISO_DOT_BESS_SP_CURRENT (35, DNP, 30, 1, Analog Input, MW)
- **BESS PPC**: CAISO_DOT_BESS_SP_TARGET (36, DNP, 30, 1, Analog Input, MW)
- **BESS PPC**: CAISO_TARGET_TIME (37, DNP, 30, 1, Analog Input, SECONDS-epoch)
- **BESS PPC**: Cumulative Annual Energy Throughput MWh (38, DNP, 30, 1, Analog Input, MWh)
- **BESS PPC**: Annual Average Status of Charge (%) (39, DNP, 30, 1, Analog Input, %)
- **AGC Curtailment Enable Request** (0, DNP, 12, 1, Binary Output, MW)
- **BIAS** (0, DNP, 40, 1, Analog Output, MW)
Exhibit 2: Representative Buyer’s Scheduling Coordinator Outage Template

<table>
<thead>
<tr>
<th>Participant Name</th>
<th>CRAs</th>
</tr>
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<tbody>
<tr>
<td>Outage Class</td>
<td>Brownout</td>
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<tr>
<td>Resource</td>
<td>Onsite</td>
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<tr>
<td>Start Date/Time</td>
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</tr>
<tr>
<td>End Date/Time</td>
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</tr>
<tr>
<td>Discovery Date/Time</td>
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<td>Emergency Return Time/Type</td>
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<td>Nature of Work</td>
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### Short Description

<table>
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<tr>
<th>Notes</th>
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### Resource: EIA

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<tr>
<th>Availability Date</th>
<th>Availability Time</th>
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<th>Gen Max MW</th>
<th>Load ODS</th>
<th>Load Max MW</th>
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### All Availability

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<thead>
<tr>
<th></th>
<th>Up</th>
<th>Down</th>
<th>Spin</th>
<th>Non-Spin</th>
</tr>
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<tbody>
<tr>
<td>Max Energy Change?</td>
<td>NO</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

|           | NO |      |      |          |
| Max Energy Change? | NO |      |      |          |

Exhibit Q - 2

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The metering diagram is illustrative and a more precise metering diagram will be developed by Seller during detailed project design and shared with Buyer at least 90 Days prior to the Guaranteed Commercial Operation Date.
EXHIBIT S
FORM OF COLLATERAL ASSIGNMENT AGREEMENT
FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

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

RECITALS

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

A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);

C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties
hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

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

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

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, CPA is authorized to act in accordance with Collateral Agent’s instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, that, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company’s cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; provided, further, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and
is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

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

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults
of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

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

(b) Substitute Owner.

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

(c) No Liability.

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

1.8 Delivery of Notices.

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

1.9  **Confirmations.**

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

1.10  **Exclusivity of Dealings.**

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

1.11  **No Amendments.**

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

**SECTION 2.  PAYMENTS UNDER THE PPA**

2.1  **Payments.**

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

2.2  **No Offset, Etc.**
All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

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

3.1 Organization.

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

3.2 Authorization.

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

3.3 Execution and Delivery; Binding Agreements.

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

3.4 No Default or Amendment.

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

3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.
SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 Organization.

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

4.2 Authorization.

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

4.3 Execution and Delivery; Binding Agreement.

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

4.4 No Default or Amendment.

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

4.5 No Previous Assignments.

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

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

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

5.2 Execution and Delivery; Binding Agreement.

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

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [Notice Section of the PPA] of the PPA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this
Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 **Heads.**

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 HERUNDER. EACH PARTY FURTHER
WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS
LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS
JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10  **Entire Agreement.**

This Consent and any agreement, document or instrument attached hereto or referred to herein
integrate all the terms and conditions mentioned herein or incidental hereto and supersede all
oral negotiations and prior writings in respect to the subject matter hereof. In the event of any
conflict between the terms, conditions and provisions of this Consent and any such agreement,
document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11  **Effective Date.**

This Consent shall be deemed effective as of the date upon which the last Party executes this
Consent.

6.12  **Counterparts; Electronic Signatures.**

This Consent may be executed in one or more counterparts, each of which will be deemed to
be an original of this Consent and all of which, when taken together, will be deemed to
constitute one and the same agreement. The exchange of copies of this Consent and of signature
pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic
means shall constitute effective execution and delivery of this Consent as to the Parties and
may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

ARLINGTON ENERGY CENTER II, LLC,
a Delaware limited liability company.

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

By:_____________________________  By:_____________________________
[Name]  [Name]
[Title]  [Title]
Date:___________________________  Date:___________________________

[NAME OF COLLATERAL AGENT],
[Legal Status of Collateral Agent].

By:_____________________________
[Name]
[Title]
Date:___________________________
SCHEDULE A

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

FORM OF LIMITED ASSIGNMENT AGREEMENT

LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [    ], 2022 the “Limited Assignment Agreement Effective Date”) by and among Arlington Energy Center II, LLC, a Delaware limited liability company (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and J. Aron & Company LLC, a New York limited liability company (“Financing Party”), and relates to that certain PPA defined in Appendix 1 hereto. 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 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 Assigned Product (as defined in Appendix 1) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section in Appendix 1 (the “Assigned Product Rights”). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.

b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Product that is actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, including without limitation obligations with respect to the provision of PPA Buyer financial statements, Buyer Credit Notices, and Buyer Credit Support, and payment for any Product which is not included in the Assigned Product and any other amounts owed under the PPA. To the extent Financing Party fails to pay for any Assigned Product by the due date for payment set forth in the PPA, PPA Buyer remains responsible for such payment, and it will be a Buyer Event of Default pursuant to PPA Section 11.1(a)(i) if PPA Buyer does not make such payment within five (5) Business Days of receiving notice of such non-payment from PPA Seller.

c) Financing Party hereby accepts and agrees, and PPA Seller hereby consents, to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

d) All scheduling of Assigned Product 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 during the Assignment Period (i) title to Assigned Product will pass from PPA Seller to Financing Party upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer is hereby authorized by Financing Party...
to and shall act as Financing Party’s agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Financing Party of any Notice (as defined in the PPA) 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; (iv) PPA Buyer and PPA Seller will forward to Financing Party copies of annual forecasts of Energy provided pursuant to Section 4.3(a) of the PPA and monthly forecasts of available capacity of the Generating Facility provided pursuant to Section 4.3(b) of the PPA; (v) PPA Buyer and PPA Seller will forward copies to Financing Party of all invoices provided to PPA Buyer pursuant to Section 8.1, 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 8.4, 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 Financing Party. PPA Buyer shall promptly reimburse PPA Seller for any additional costs or expenses reasonably and actually incurred by PPA Seller as a result of this subsection (d).

c) PPA Seller acknowledges that (i) PPA Buyer and Financing Party have advised PPA Seller that Financing Party intends to immediately transfer title to any Assigned Product received from PPA Seller through one or more intermediaries such that all Assigned Product 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; provided, however, that (A) at no time shall PPA Seller be required to pay Financing Party for any such receivables exceed any Delivered Product Payment Obligation, (B) any such application by Financing Party shall not affect any amounts due and owing under the PPA, including under any invoice, and (C) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA, including the total gross amount due to PPA Seller under each invoice.

f) At least three (3) Business Days before the commencement of the Assignment Period, The Goldman Sachs Group, Inc. (the “Guarantor”) will issue, in favor of PPA Seller, a guaranty of Financing Party’s payment obligations under this Assignment Agreement substantially in the form of Appendix 2 attached hereto (the “Guaranty”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts due from Financing Party and not timely paid as set forth herein; provided, however, that PPA Seller’s rights under the Guaranty and this subsection (f) shall not reduce or affect PPA Buyer’s obligation to render payments when due under the PPA or extend any deadlines in the PPA.

g) Notwithstanding anything to the contrary herein, nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA, including with respect to CAISO revenues and costs.

h) Notwithstanding anything to the contrary in this Assignment Agreement including without limitation the immediately preceding Section 1(g) (with respect to the phrase “nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA”) and Section 6(i) hereof, the Parties hereby agree that if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to this Assignment Agreement, or (2) PPA Seller’s performance of any Exhibit U – 2

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obligation under this Assignment Agreement, including without limitation if PPA Seller makes any change to the recipient of the WREGIS Certificates as directed by Financing Party and PPA Buyer pursuant to Appendix 1 hereof, fails to meet any requirements of the PPA, then PPA Seller shall not be deemed to be in breach of any obligation in the PPA, including without limitation any representation or warranty therein.

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 payment is not made by Financing Party within three (3) Business Days following receipt by Financing Party and PPA Buyer of written notice thereof;

      (3) delivery of a written notice by PPA Seller if any of the events described in the definition of Bankrupt in the PPA occurs with respect to Financing Party;

      (4) delivery of a written notice by Financing Party if any of the events described in the definition of Bankrupt in the PPA occurs with respect to PPA Seller;

      (5) failure of the Guaranty provided by the Guarantor to PPA Seller hereunder to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Financing Party hereunder or if the Guarantor provides notice of termination of the Guaranty or otherwise repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or

      (6) neither Financing Party nor the Guarantor maintains a Credit Rating equal to or greater than Baa3 from Moody’s and BBB- from S&P, and if ratings by S&P and Moody’s are not equivalent, the lower rating shall apply (a “Required Credit Rating”).

   b) The Assignment Period will end at the end of the 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 Financing Party to PPA Buyer upon the expiration 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.

   c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from
Financing Party to PPA Buyer upon the expiration of or early termination of the PPA, 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. **Representations and Warranties.** The PPA Seller and the PPA Buyer represent and warrant to Financing Party, as of the Assignment Agreement Effective Date, that (a) the PPA is in full force and effect; and (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. Financing Party represents and warrants to PPA Seller, as of the Assignment Agreement Effective Date, that the Guarantor has a Required Credit Rating.

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 Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify Financing Party of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. 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 Notice Information to be added by Financing Party]

5. **Costs and Expenses.** Each Party will pay its own costs and expenses (including legal fees) incurred in connection with this Assignment Agreement and as a result of the negotiation, preparation, and execution of this Assignment Agreement; provided, however, Buyer shall reimburse Seller for all out-of-pocket expenses reasonably incurred by Seller in excess of five thousand dollars ($5,000) but not to exceed a total reimbursement of ten thousand dollars ($10,000) for the term of this Assignment Agreement; provided further prior to any such reimbursement, Seller shall send Buyer an accounting of the out-of-pocket expenses reasonably incurred within 30 days following the end of each quarter in a calendar year.

6. **Miscellaneous.** Section 13.2 (Buyer’s Representations and Warranties), Article 18 (Confidential Information), Sections 19.5 (Severability), 19.7 (Counterparts), 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.6 (Mobile-Sierra), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein. For avoidance of doubt, and notwithstanding anything to the contrary in this Assignment Agreement: (i) except to the limited extent specified in Section 1(h) of this Assignment Agreement, nothing in this Assignment Agreement shall modify any provision of the PPA; (ii) PPA Buyer remains obligated to perform all its obligations under the PPA notwithstanding the limited assignment under this Assignment Agreement (including without limitation any such obligations not timely performed by Financing Party under this Assignment Agreement), and any failure by Financing Party to make payments to PPA Seller as provided in this Assignment Agreement when due under the PPA shall be a Buyer Event of Default under the PPA if not cured within the applicable cure period specified in Section 11.1(a)(i) of the PPA; (iii) this Assignment Agreement shall not purport to convey or otherwise allege any right of PPA Buyer or Financing Party to make any prepayment to Seller under the PPA or to file or impose any lien on the Facility; and (iv) neither Financing Party nor PPA Buyer shall make any assignment of its rights or delegation of its obligations under this Assignment Agreement.
Agreement without the prior written consent of PPA Seller, which it may withhold in its sole discretion.

7. **U.S. Resolution Stay Provisions.** If each of the Parties hereto have not adhered to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “ISDA U.S. QFC Protocol”), the terms of the ISDA U.S. QFC Protocol shall be incorporated into and form a part of this Assignment Agreement. For purposes of incorporating the ISDA U.S. QFC Protocol, each Party shall be deemed to have the same status as “Regulated Entity” and/or “Adhering Party” (as such terms are defined therein) applicable to it under the ISDA U.S. QFC Protocol and this Assignment Agreement shall be deemed to be a “Protocol Covered Agreement” (as defined therein).

8. **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 regard to principles of conflicts of law provisions that would direct the application of another jurisdiction’s laws.

    b) **Jurisdiction.** Each Party submits to the exclusive jurisdiction of the federal courts of the United States, or the courts of the State of California, sitting in the City and County of Los Angeles, California.

    c) **Waiver of Right to Trial by Jury.** TO THE EXTENT PERMITTED BY LAW, 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.

ARLINGTON ENERGY CENTER II, LLC
a Delaware limited liability company

By: ___________________________
Name: __________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,

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” means that certain Second Amended and Restated Renewable Power Purchase Agreement dated [__], 2022, by and between Clean Power Alliance of Southern California, a California joint powers authority, and Arlington Energy Center II, LLC, a Delaware limited liability company, 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: PV Energy and Green Attributes (PCC1 RECs).

Further Information: PPA Seller shall transfer the WREGIS Certificates pursuant to Section 4.10 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 Financing Party and PPA Buyer upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. All Assigned Product delivered by PPA Seller to Financing Party shall be a sale made at wholesale, with Financing Party reselling all such Assigned Product.
Appendix 2

Form of Guaranty

NAME
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, [_____] (the “Guarantor”), a corporation duly organized under the laws of the State of [___], 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 [___], a subsidiary of the Guarantor and a [_____] duly organized under the laws of the [___] (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 of Southern California 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 further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the guaranteed obligations, or interest thereon is rescinded or must otherwise be restored or returned by the Counterparty upon the bankruptcy, insolvency, dissolution or reorganization of the Company. No failure on the part of the Counterparty to exercise, and no delay in exercising,
any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

The Guarantor hereby represents as follows:

(a) The Guarantor is duly organized, validly existing, and in good standing under the laws of the State of [_____] and has full power and authority to execute and deliver this Guaranty.

(b) The execution and delivery of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of the Guarantor's certificate of incorporation or by-laws, as amended to date, or any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on the Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder.

(c) All consents, licenses, clearances, authorizations, and approvals of, and registration and declarations with, any governmental or regulatory authority necessary for the due execution and delivery of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental or regulatory authority is required in connection with the execution or delivery of this Guaranty.

This Guaranty constitutes the legal, valid, and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with all of its terms and conditions (subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors’ rights generally). The enforceability of the Guarantor’s obligations is also subject to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

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 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, reorganizing 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

Exhibit U – 9
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,

[___]

By: ____________________________

Authorized Officer
EXHIBIT V

GFCOD DEVELOPMENT CURE PERIOD CLAIMS

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

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

This Exhibit V does not address, the Second Amendment did not address, nor does the term “GFCOD Development Cure Period Claims” include, any Seller Development Cure Period Claims pertaining to (i)
EXHIBIT W

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

Seller: [Name]  Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.

- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.

- Project schedule and/or GANNT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: ________________

Name: ________________

Title: ________________

Date: ________________
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** Geysers Power Company, LLC, a Delaware limited liability company

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

**Description of Facility:** As set forth in Exhibit A.

**Guaranteed Commencement Date:** 6/1/2027

**Delivery Term:** Eleven (11) Contract Years

**Delivery Point:** CAISO Grid (with financial settlement at NP-15 EZ Gen Hub)

**Contract Quantity:** 100 MW

**Designated RA Capacity:** 100 MW (subject to adjustment pursuant to Section 3.5)

**Delivery Term Expected Energy:**

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<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
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<tr>
<td>1</td>
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**Renewable Rate:**

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<th>Contract Year</th>
<th>Contract Price ($/MWh)</th>
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<td>1 – 11</td>
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</table>

**Capacity Rate:**
### Contract Year vs. Contract Price

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<tr>
<th>Contract Year</th>
<th>Contract Price ($)/kW-month</th>
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</thead>
<tbody>
<tr>
<td>1 – 11</td>
<td></td>
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</tbody>
</table>

**Monthly RA Capacity Payment:** Capacity Rate x Designated RA Capacity x 1,000 = $/month.

**Product:** The Product includes each of the following categories, all as associated with or attributable to the Contract Quantity throughout the Delivery Term.

- 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

**Scheduling Coordinator:** Seller or its designee

### Performance Security

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<th>Security Amount</th>
<th>Timing for Posting</th>
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<tr>
<td>At all applicable times that Seller is Investment Grade:</td>
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<td>No later than one (1) year after the Effective Date</td>
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<tr>
<td>If and when Seller falls below Investment Grade:</td>
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<td>Within ten (10) Business Days of the applicable downgrade event.</td>
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RENEWABLE POWER PURCHASE AGREEMENT

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

RE bâtale

WHEREAS, Seller owns and operates 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 3.10.

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

“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.

“Assignment Agreement” has the meaning set forth in Section 14.4.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.
“Average Day Ahead Market LMP” shall mean for any given day, an amount that is
equal to the average of each of the 24 hourly Day Ahead Locational Marginal Prices for the NP15
EZ Gen Hub, as posted and updated by the CAISO.

“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 14.4.

“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 produced by the Facility.

“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 Period.

“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 Facility Energy delivered by Seller to any
CAISO-administered market, including costs and revenues associated with CAISO dispatches, for
each applicable Settlement Period.
“CAISO Tariff” or “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 Attributes” means any and all of the following:

(a) any current or future defined characteristics, certificates, tags, credits, ancillary service attributes, or accounting constructs, including any accounting construct counted toward any Resource Adequacy Requirements, attributed to or associated with the amount of power that the Facility can generate and deliver to the Delivery Point under this Agreement at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules;

(b) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;

(c) resource adequacy attributes or other locational attributes for the Facility related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Facility within the CAISO-Controlled Grid, that can be counted toward a Local RAR; and

(d) flexible capacity resource adequacy attributes for the Facility, including, without limitation, the amount of EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

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

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

“CEC Certification and Verification” means that the CEC has 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.

“Commencement Date” has the meaning set forth in Section 2.2.

“Compliance Actions” has the meaning set forth in Section 3.10.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.10.
“Confidential Information” has the meaning set forth in Section 18.1.

“Contract Quantity” means the amount of Product (in MWs) set forth on the Cover Sheet, which Seller has committed to deliver to the Delivery Point on behalf of Buyer pursuant to this Agreement.

“Contract Price” has the meaning set forth on the Cover Sheet.

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

“Contract Year” means a period of twelve (12) consecutive months; provided, the final Contract Year shall end December 31, 2037 regardless of the first day of such Contract Year (i.e. the final Contract Year will be seven (7) months if the Commencement Date occurs on June 1). The first Contract Year shall commence on the Commencement Date and each subsequent Contract Year shall commence on the anniversary of the Commencement 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 Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit I.

“CPM Price” has the meaning set forth in Section 3.6(c).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“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).

“Curtailed Energy” means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point to satisfy the Contract Quantity, but that was not produced and delivered to the Delivery Point because of a Curtailment Order.

“Curtailment Order” means any of the following:
(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons:

(i) any System Emergency,
(ii) any warning of an anticipated System Emergency,

(iii) 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,

(iv) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWs curtailed corresponding to the MWs 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 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.

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

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

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

“Delivery Point” has the meaning set forth in the Cover Sheet.

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

“Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Replacement RA. The Designated RA Capacity shall be subject to adjustment for Force Majeure Events or Curtailment Orders as further detailed in Section 3.5.

“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.

“Effective Flexible Capacity” or “EFC” means the flexible capacity of a resource that can be counted towards an LSE’s Flexible Capacity Requirement obligation, as identified from time to time by the Tariff, the Resource Adequacy Rulings, or other Governmental Authority having jurisdiction.

“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 shall include any other electrical energy products that may be developed or evolve from time to time during the Contract Term, including reactive power.

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

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

“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 one or more of the geothermal generating facilities described on the Cover Sheet and in Exhibit A, from which the Contract Quantity will be delivered.

“Facility Energy” means the Energy generated and metered from the Facility with associated Green Attributes that is scheduled and delivered to the Delivery Point on Buyer’s behalf, not to exceed 100 MWh AC in any hour.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the high voltage side of the main step-up transformer.

“FCR Attributes” means, with respect to a Unit, the pro rata share of FCR attributes associated with the Designated RA Capacity that can be counted toward an LSE’s FCR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, or other Governmental Authority having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit. For example, if Seller designates a Unit which has an overall Unit NQC of 200 MW and Unit EFC of 200 MW, Seller’s allocation of FCR Attributes associated with the 100 MW Contract Quantity shall be 50% of the Unit EFC (50/100). If a regulatory change pursuant to Section 19.12 causes the same Unit with a 200 MW Unit NQC to eligible for only 100 MW of Unit EFC, then Buyer’s allocation of FCR Attributes would be reduced on a pro rata basis to 50 MW (i.e. 50% of the Unit’s 100 MW of Unit EFC).

“FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO).
pursuant to the Resource Adequacy Rulings and the Tariff, or to an LRA having jurisdiction over the LSE.

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

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

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

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

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

“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 (i) Tax Credits associated with the construction or operation of the Facility, (ii) tax benefits, credits or offsets associated with the development of a federal carbon tax, or (iii) any 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity 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.

“**Guaranteed Commencement Date**” has the meaning set forth in the Cover Sheet.

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.64.6.

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

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

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

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

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

“**Interest Rate**” has the meaning set forth in Section 8.2.
“Investment Grade” means, with respect to Seller, a credit rating of BBB- or higher, and a stable or positive rating outlook status, from the Kroll Bond Rating Agency (Kroll).

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

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


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

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

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the Resource Adequacy Rulings or as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Effective Date by the Resource Adequacy Rulings, CAISO, or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to an LRA having jurisdiction over the LSE.

“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 E.

“**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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes.

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

“**LRA**” has the meaning set forth in the Tariff.

“**LSE**” means load serving entity.

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

“**Monthly RA Capacity Payment**” has the meaning set forth in the Cover Sheet.

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

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

“Net Qualifying Capacity” 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).

“Notification Deadline” means fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or FCR Showings for the applicable Showing Month.

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

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

“Performance Measurement Period” means each Contract Year.

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

“Permitted Transferee” means (i) any Affiliate of Seller, or (ii) any entity that satisfies, or is controlled by another Person (on a consolidated basis with its Affiliates) that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation 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.

“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.

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

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“RA Capacity” means the qualifying and deliverable capacity of a Facility for RAR and LAR purposes for the Delivery Term, as determined by the CAISO, or other Governmental Authority authorized to make such determination under Applicable Laws.

“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 3.6(c).

“RA Guarantee Date” means the Guaranteed Commencement Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.6(c), any month during the Delivery Term during which the Designated RA Capacity included in the Showing Month for Buyer was less than the Contract Quantity of the Facility for such month.

“RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the Resource Adequacy Rulings, by the CAISO under the Tariff, or by an LRA or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or Resource Adequacy Rulings, or to an LRA having jurisdiction.

“RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Effective Date by the Tariff, the Resource Adequacy Rulings, LRA, or any Governmental Authority having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.
“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

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

“**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 Rate**” has the meaning set forth in the Cover Sheet.

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

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

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

“**Replacement RA**” means Capacity Attributes sufficient to meet Buyer’s RAR Showing, and LAR Showing and FCR Showing, if applicable, in the RA Shortfall Month.

“**Replacement Unit**” means a generating unit(s) meeting the requirements specified in Section 3.6(a).

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

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

“**Resource Adequacy Resource**” shall have the meaning used in Resource Adequacy Rulings.

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-06-002, 20-06-028, 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 LRA or Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

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

“**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 Period” means for all CAISO transactions, the period beginning at the first hour of a 24-hour period and ending at the last hour of a 24-hour period.

“Settlement Point” has the same meaning as Delivery Point, set forth in Exhibit A.

“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.

“Sites” means the real property on which the Facility is or will be located.

“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 Sites; (b) is the lessee or has the option to lease the Sites; 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 Sites.

“Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Authority, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes, and/or FCR Attributes.

“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.

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

“**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 on the Transmission System.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Facility’s point(s) of interconnection.

“**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.

“**Unit**” or “**Units**” shall mean the generation assets described in Article 3 hereof (including any Replacement Units), from which Product is provided by Seller to the Delivery Point on behalf of Buyer.

“**Unit EFC**” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. To the extent the CAISO creates new categories of flexible capacity during the term of this Agreement and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit.

“**Unit NQC**” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

“**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:

   (b) 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;

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

   (d) 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;

   (e) 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;

   (f) 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;

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

   (h) 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;

   (i) 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;

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

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

(m) 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

(n) 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, 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, and the “Commencement Date” shall be the date of the last of the following items to occur:

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

(b) Seller has paid Buyer for all amounts owing under this Agreement, if any.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. The Product includes all Facility Energy associated with the Contract Quantity throughout the Delivery Term, together with all associated
Green Attributes and Capacity Attributes (as further described in Section 3.5). For each hour of the month, Seller shall Schedule to Buyer in the Day-Ahead Market an amount of Energy equal to the forecasted Facility Energy at NP-15 using an Inter-SC Trade. 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 Contract Quantity, and Seller shall supply and deliver to the Delivery Point on behalf of Buyer all the Product produced by or associated with the Contract Quantity. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product; provided, no such resale or use shall relieve Buyer of any of its obligations under this Agreement. Buyer has no obligation to pay Seller for any Green Attributes for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or Curtailment.

3.2 **Compensation for Energy and Green Attributes.** During the Delivery Term, for each MWh of Facility Energy (including Green Attributes) delivered to the Delivery Point on behalf of Buyer, Buyer shall pay Seller the difference of (A) the Renewable Rate, minus (B) the Average Day-Ahead Market LMP; provided, if the foregoing calculation in a given month results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller’s monthly invoice) at the Renewable Rate.

3.3 **Compensation for Capacity Attributes.** During the Delivery Term, Buyer shall make the Monthly RA Capacity Payment to Seller, in arrears, after the applicable Showing Month, in accordance with Article 8; provided, any RA Deficiency Amount for the applicable Showing Month owed pursuant to Section 3.6 shall be applied as a credit to Buyer against the Monthly RA Capacity Payment otherwise owing.

3.4 **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. Any such Future Environmental Attributes shall be limited to only those environmental attributes relating to the Contract Quantity that Buyer will receive under this Agreement. Subject to the final sentence of this Section 3.4(a), and Sections 3.4(b) and 3.10, 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 Renewable Rate or Capacity Rate. 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 3.4(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, 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.

3.5 Sale of Capacity Attributes.

(a) During the Delivery Term, Seller shall dedicate and convey the Designated RA Capacity to the Delivery Point on behalf of the Buyer. The Designated RA Capacity does not confer to Buyer any right to the electrical output from the Facility, other than the right to include the capacity associated with the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Agreement. Specifically, no energy or ancillary services associated with the Facility is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required in connection with the Designated RA Capacity. Seller retains the right to sell pursuant to the CAISO Tariff any RA Capacity from any Unit within the Facility that is in excess of Seller’s Contract Quantity and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to the Delivery Point on behalf of Buyer.

(b) Seller shall deliver to the Delivery Point the Capacity Attributes from the Facility in the amount of the applicable Contract Quantity; provided, if, and to the extent that, (i) Units are not available to provide the full amount of the Contract Quantity, and (ii) Seller has given Buyer notice on or before the Notification Deadline, then Seller may provide Replacement RA pursuant to Section 3.6(a) hereof. To the extent that Seller is prevented from delivering Capacity Attributes from the Facility due to a Force Majeure Event or Curtailment Order, Seller shall have the option, but no obligation, to provide Replacement RA; provided, if Seller decides not to provide Replacement RA in such a circumstance, the Designated RA Capacity shall be adjusted downward by an equivalent amount for purposes of determining the applicable Monthly RA Capacity Payment.

(c) Seller represents, warrants and covenants to Buyer that:

(i) Prior to the Commencement Date, Seller has reserved, and has not otherwise used, granted, pledged, assigned or otherwise committed a sufficient amount of the generating capacity of the Facility to provide the Contract Quantity to meet the Resource Adequacy Requirements of, and to confer Capacity Attributes on, Buyer for use during the Delivery Term; and

(ii) Throughout the Delivery Term, Seller will reserve, and will not otherwise use, grant, pledge, assign or otherwise commit a sufficient amount of the generating capacity of the Facility to provide the Contract Quantity to meet the Capacity Attributes of, and to confer Capacity Attributes on, Buyer, free and clear of any claims on such Capacity Attributes by any other entity.

(d) Subject to Section 3.10, if the CAISO, LRA, or other Governmental Authority, defines new or re-defines existing local areas such that there is a change in the quantity
or characteristics of the LAR Attributes provided by the Facility, then such change will not result in a change in obligations or payments made pursuant to this Agreement.

3.6 Replacement RA and Resource Adequacy Failure

(a) Replacement RA. If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, then Seller may, at no cost to Buyer, provide Buyer with Capacity Attributes from one or more generating units that are capable of providing Replacement RA ("Replacement Units"), with the total amount of Product and Replacement RA provided to Buyer from the Unit and the Replacement Units, respectively, not to exceed an amount equal to the Contract Quantity for the applicable Showing Month; provided, in each case Seller shall notify Buyer of its intent (i) not to provide or (ii) to provide Replacement RA and identify Replacement Units meeting the above requirements no later than the Notification Deadline. Replacement Units shall be capable of delivering Replacement RA that can be applied by Buyer to satisfy its RAR. Any Replacement RA shall be communicated by Seller to Buyer with product information in a Notice substantially in the form of Exhibit F. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 3.6, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

(b) RA Deficiency Determination. Notwithstanding Seller’s obligations set forth in Section 3.5 or anything to the contrary herein, 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 3.6(a), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer except as set forth in Section 16.3; provided, in the event of a change of Law implementing an unforced capacity (UCAP) standard applicable to Seller, Section 19.12 shall apply.

(c) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount.

The “RA Deficiency Amount” is equal to the product of the difference, expressed in kW, of (i) the Designated RA Capacity, minus (ii) the amount of Capacity Attributes delivered in such Showing Month, multiplied by the CPM Price.

(c) The “CPM Price” is an amount equal to (i) the CPM Soft Offer Cap (or its successor), times (ii) the applicable CPM Adjustment Factor for the applicable RA Shortfall Month; provided, if the CAISO begins using a shaped or weighted price for purposes of setting the CPM Soft Offer Cap, the Parties shall thereafter use the full amount of the CPM Soft Offer Cap (without applying the CPM Adjustment Factor) as the CPM Price for all RA Shortfall Months.

3.7 CEC Certification and Verification. Subject to Section 3.10, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to 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).
3.8 **Eligibility.** Subject to Section 3.10, 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 the Delivery Point on behalf of Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default (and Buyer’s payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.8 means efforts consistent with and subject to Section 3.10.

3.9 **California Renewables Portfolio Standard.** Subject to Section 3.10, 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.

3.10 **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 3.10, 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 Contract Quantity (“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 3.10 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 (as may be revised and updated by Seller in its reasonable discretion).
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.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commencement Date through the end of the Contract Term, Seller (or Seller’s designated Scheduling Coordinator) shall Schedule and deliver the Facility Energy to the Delivery Point on behalf of Buyer in accordance with all applicable CAISO requirements. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** All Green Attributes associated with the Product during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all such Green Attributes associated with the Contract Quantity 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. 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.

(c) **Capacity Attributes.** Seller shall dedicate and convey any and all Capacity Attributes associated with or attributable to the Designated RA Capacity throughout the Delivery Term to Buyer and Buyer shall be given sole title to all such Capacity Attributes in order for Buyer to meet its resource adequacy obligations under any Resource Adequacy Rulings.

4.2 **Scheduling Coordinator Responsibilities.**

(a) **Seller to be Scheduling Coordinator.** During the Delivery Term, Seller shall act as Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point on behalf of Buyer. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) **Delivery of Designated RA Capacity.**
(i) Seller shall, on a timely basis, submit, or cause the Unit’s Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(ii) Seller shall cause the Unit’s Scheduling Coordinator to submit written notification to Buyer, no later than fifteen (15) Business Days before the applicable RAR Showings, LAR Showings and/or FCR Showings deadlines for each Showing Month, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan so that the Designated RA Capacity credited equals the Designated RA Capacity for such Showing Month.

(c) CAISO Costs and CAISO Revenues. As the Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues; provided, any net costs or charges assessed by the CAISO which are due to a Buyer Default shall be Buyer’s responsibility. The Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller’s responsibility.

(d) Future Changes to Scheduling Protocols. During the Delivery Term, the Parties agree to discuss in good faith requested changes by either Party to the CAISO scheduling procedures set forth in this Agreement.

4.3 Forecasting. Seller shall comply with all applicable obligations under the CAISO Tariff that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder. To the extent Seller anticipates delivering an amount of Product that is less than the Contract Quantity for any of the reasons set forth in Section 4.5, Seller shall expeditiously provide Buyer with notice of such reduction, along with an explanation of the cause and expected duration of the reduction.

4.4 Curtailment. 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. Any Curtailment Order shall not reduce Seller’s delivery of Facility Energy by more than Buyer’s pro rata share.

4.5 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit C, and subject to the notice requirements in Section 4.3:

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

(c) **Force Majeure Event.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

Any reduction in delivery of Product pursuant to this Section 4.5 shall be applied equally across each of the 24 hours in the applicable Settlement Period, and shall not reduce the delivery of Facility Energy by more than Buyer’s pro rata share.

4.6 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to CAISO on behalf of Buyer an amount of Facility Energy 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 $\text{Expected Energy} \times \text{ Fraction}$ of the annual Expected Energy for the applicable Contract Year constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer’s Default or other Buyer failure to perform that directly prevents Seller from being able to deliver 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 the Delivery Point all Facility Energy it could reasonably have delivered to the Delivery Point on behalf of Buyer but was prevented from delivering to the Delivery Point on behalf of Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer’s Default or other failure to perform, or Curtailment Period (“**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 C (“**Energy Replacement Damages**”); provided, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit C) to NP-15 EZ Gen Hub on behalf of Buyer 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, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.7 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.10, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.7(g), provided that Seller fulfills its obligations under Sections 4.7(a) through (g) below. In addition:
(a) Prior to the Commencement 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 delivered to Buyer for a calendar month as compared to the Facility 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 any error or omission 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 next coming due to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit C) 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 (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement) will be taken prior to the first delivery under this Agreement.

ARTICLE 5
TAXES

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product to the Delivery Point 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 Unit that create an imminent risk of
damage or injury to any Person or any Person’s property and would materially impact Seller’s obligations to deliver Product pursuant to this Agreement, Seller shall take all actions required by applicable Law and Prudent Electrical Practices 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.

ARTICLE 7
METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable meter requirements and Prudent Operating Practices. All meters will be operated pursuant to applicable calculation methodologies and maintained as Seller’s cost. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer.

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

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered for any Settlement Period during the preceding month, including the amount of Facility Energy delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Green Attributes in MWh delivered to the Delivery Point, the Renewable Rate applicable to Facility Energy and Green Attributes (in $/MWh), the Monthly RA Capacity Payment, the amount of Replacement Product and/or Replacement RA, and the RA Deficiency Amount (if any); and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.
8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s 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 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 [Intentionally Omitted]**

**8.8 Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver the Performance Security to Buyer no later than one (1) calendar year after the Effective Date. On an annual basis each year in which Seller is Investment Grade, Seller shall provide Buyer with documentation from the Kroll Bond Rating Agency that explains Seller’s then-current credit rating and rating outlook status. If Seller’s credit rating and rating outlook status falls below Investment Grade, Seller shall provide notice and documentation to Buyer no later than five (5) Business Days after such downgrade event and provide additional credit support as set forth on the Cover Sheet. 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 Performance Security for another permitted form (i.e., cash or Letter of Credit, as applicable).

**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 Performance Security 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 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 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 Performance Security; and

(c) Liquidate all Performance Security 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 G 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; public safety power shutoff; fire; volcanic eruption; sustained drought in Lake, Sonoma or Mendocino counties that (i) begins after the Effective Date, (ii) is materially more severe than the drought conditions that have existed during the ten (10) year period prior to the Effective Date as determined by the National Integrated Drought Information System, and (iii) which materially impacts power production at the Facility, as verified in a written report prepared by a Licensed Professional Engineer; storm; pestilence; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events or natural catastrophes; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or disobedience; actions or inactions by Governmental Authority (including a change in applicable Law, but excluding Seller’s compliance obligations and as set forth in 10.01(c) below), 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 actions or inactions by Governmental Authority (including a change 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) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of steam, water or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (v) 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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred 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 (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.6, or (B) failures related to the Adjusted
Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7 and 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) if at any time Seller delivers or attempts to deliver Product associated with the Contract Quantity to any Person other than Buyer;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit C) 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, 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 Section 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) failure by Seller to commence the Delivery Term on or before the Guaranteed Commencement Date;
(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a 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 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 Termination Payment 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 Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment in accordance with this Section 11.3. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Effective Date (“Termination Payment”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment 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. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment 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 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. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment 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 provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment 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 Commencement 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 Contract Quantity 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 Sites so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

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

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

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

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE
ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN 
THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO 
SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF 
CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH 
OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR 
ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR 
UNENFORCEABLE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE 
LIQUIDATED, INCLUDING UNDER SECTIONS 3.6, 4.6, 11.2 AND 11.3, AND AS 
PROVIDED IN EXHIBIT B AND EXHIBIT C. THE PARTIES ACKNOWLEDGE THAT THE 
DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE 
OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE 
LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE 
ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE 
LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES 
BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING 
THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT 
OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY 
RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

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

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

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

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

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

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

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

(f) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof have been satisfied and are in full force and effect;

(g) Seller has received CEC Certification and Verification for the Facility; and

(h) Seller has completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within WREGIS.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

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

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

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

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

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

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

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

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

**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 such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit H (“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 shall give Buyer Notice within fifteen (15) Business Days after the date of such assignment; and

   (iii) Seller provides Buyer a written agreement signed by the Person to which Seller has assigned 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.

14.4 **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 D (“Assignment Agreement”), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer’s Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody’s and BBB- from S&P. As reasonably requested by Buyer, Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to
forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.4.

ARTICLE 15
DISPUTE RESOLUTION

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

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

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

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

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

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

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, 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.

16.3 Indemnities for Failure to Deliver Designated RA Capacity. Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Designated RA Capacity;

(b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Section 3.5;

(c) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder; or

(d) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and
fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

ARTICLE 17
INSURANCE

17.1 Insurance

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in an amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of Two Million Dollars ($2,000,000), including contractual liability in said amount, covering Seller’s obligations under this Agreement in accordance with the policy’s terms and conditions (which such policy shall be materially consistent with market-standard insurance policies), and including Buyer as an additional insured but only with respect to the indemnity obligations under this Agreement. Defense costs shall be included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall have a limit of 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 ($1,000,000.00) 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 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 ($1,000,000.00) 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) Subcontractor Insurance. Seller shall require all of its subcontractors to maintain coverages and limits that are appropriate for the work being performed.

(f) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such 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 include 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 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, 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 or, subject to Section 3.10, Resource Adequacy Rulings, renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the 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.

GEYERS POWER COMPANY, LLC

By: __________________________
Name: _______________________
Title: _______________________

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

By: __________________________
Name: _______________________
Title: _______________________

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EXHIBIT A

DESCRIPTION OF THE FACILITY

1. Generating Facility Description.

The power plants in The Geysers Known Geothermal Resource Area (“KGRA”) have been generating electricity for California since 1960. Geysers Power Company, LLC (“GPC”), a Calpine Corporation (“Calpine”) affiliate, has more than 35 years of experience at The Geysers, and manages the largest operations there with thirteen operating power plants, more than 350 steam wells and some 60 condensate and water injection wells connected by 80 miles of pipeline producing 725 MW of renewable energy.

Each power plant consists of a low-pressure steam turbine or turbines, a generator(s), condenser, cooling tower, air pollution abatement system, pumps and other auxiliary equipment, transformers and circuit breakers to connect the facilities to the CAISO controlled grid. Each Geysers power plant is connected to one of three PG&E owned transmission lines: Geysers-Eagle Rock 115 kV, Geysers-Fulton 230 kV, or Geysers-Lakeville 230 kV transmission.

The steam field consists of more than 400 wells and over 80 miles of steam pipelines which deliver the geothermal steam to the power plants. This extensive pipeline network allows the condensed steam (condensate) and supplemental water from within the Geysers, and from treated effluent pipelines from Santa Rosa and from Lake County, to be injected throughout the steam field to maintain and enhance steam production.

2. Site Description.

The Geysers KGRA is a forty square mile area of Sonoma and Lake Counties, approximately seventy miles north of San Francisco. The land in the Geysers KGRA is zoned for geothermal development and has had geothermal development within it for more than 50 years. GPC manages more than 29,000 acres under more than 150 public and private mineral and land leases in the Geysers KGRA as part of its extensive geothermal operations. Those leases provide for the continued control of site access and the steam resource beneath the ground by GPC for as long as commercial production of steam occurs.


Note that because of its rural location, individual Geysers power plants do not have their own street or mailing address. The mailing address for the Geysers Power Plant is:

10350 Socrates Mine Road
Middletown, CA 95461
### Facilities Comprising Calpine’s Geysers Power Plant

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<tr>
<th>Name of Facility</th>
<th>Single Line Facility Name</th>
<th>CAISO Resource ID</th>
<th>CEC RPS ID</th>
<th>WREGIS GU ID</th>
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EXHIBIT B

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

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

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

Exhibit B - 1
EXHIBIT C

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:

\[(A – B) * (C – D)\]

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 Delivery Point, plus (b) the market value of Replacement Green Attributes. Buyer shall use commercially reasonable efforts to determine, in good faith, the market value of Replacement Green Attributes on the basis of quotations from at least three (3) brokers of Replacement Green Attributes. Such market value shall be the average of the three (3) quotations. If, after using commercially reasonable efforts, Buyer is not able to obtain at least three (3) such market quotations, Buyer may, in good faith and in a commercially reasonable manner, calculate such market value. Buyer is not required to enter into a replacement transaction in order to determine this amount.
- **D** = the Renewable Rate, in $/MWh

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

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

“**Replacement Green Attributes**” means PCC1 Renewable Energy Credits 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.
No payment shall be due if the calculation of (a) \((A - B)\), (b) \((C - D)\) or (c) \([(A – B) \times (C – D)]\), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit C.

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 D
FORM OF ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among Geysers Power Company, LLC, a Delaware limited liability company (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [FINANCING PARTY], a [JURISDICTION] limited liability company (“Financing Party”), 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. To the extent there is any inconsistency between this Assignment Agreement and the PPA as to any obligations not expressly provided herein, the terms of the PPA shall prevail.

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

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All 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 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”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products and PPA Buyer agrees that it will remain jointly and severally responsible as primary obligor (and not as surety) for the payment of all Delivered Product Payment Obligation; 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 Financing Party consistent with Section 1(d) hereof). To the extent Financing Party 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 remains responsible for such payment and that it will be an Event of Default pursuant to Section 11.1 if PPA Buyer does not make such payment within five (5) Business Days of receiving Notice of such non-payment from PPA Seller. In addition, PPA Buyer agrees that, regardless of receiving any such notice, it will indemnify and hold PPA Seller harmless from and against all losses, costs, damages, liabilities and expenses of any kind as a result of or arising from the assignment, transfer, conveyance and delegation described in clauses (a) and (b) of this paragraph 1 and from the failure...
of Financing Party to make any payment in respect of Delivered Product Payment Obligation as and when due under the PPA (and disregarding the effects of any stay or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws), whether due to bankruptcy, insolvency or any other cause.

(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) title to Assigned Product will pass from PPA Seller to Financing Party upon delivery by PPA Seller of Assigned Product in accordance with the PPA (ii) PPA Buyer will provide copies to Financing Party 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 Financing Party of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1, 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 Financing Party; and (iv) PPA Buyer will provide copies to Financing Party of any other information reasonably requested by Financing Party relating to Assigned Products, provided that any failure to provide such information shall not excuse the performance of any other Party hereunder.

(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 valid, lien-free receivables due from PPA Buyer for Assigned Products, Financing Party may transfer good, marketable and lien-free title to such receivables to PPA Seller and, so long as PPA Buyer does not have any defense in respect of such receivables other than a defense that would have arisen under the PPA if this Assignment Agreement were not in effect, apply the face amount thereof as a reduction to any Delivered Product Payment Obligation owed by Financing Party to PPA Seller; provided that no such transfer or application shall reduce or limit PPA Buyer’s obligations under Section 1(b) above.

(f) On or before the commencement of the Assignment Period, [GUARANTOR COMPANY] (“Guarantor”), will issue, in favor of PPA Seller, a guaranty of Financing Party’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“Guaranty”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.

(g) All payments due to PPA Buyer in respect of Section 3.2 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
Financing Party, PPA Buyer and [Custodian] have entered into for the administration of payments due hereunder.¹

(h) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Financing Party and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.

(i) Without in any way affecting the joint and severally liability of PPA Buyer as primary obligor, or the other obligations of PPA Buyer, as specified herein or under the PPA, in the event the PPA or the Assigned Product Rights are rejected, disaffirmed, repudiated or terminated (or any in combination), in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Financing Party, PPA Buyer shall, at the option of PPA Seller exercised within 30 days after such rejection, disaffirmation, repudiation or termination, enter into a new agreement with PPA Seller having identical terms as the PPA described on Appendix 1 (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA described on Appendix 1.

(j) Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs.

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 three (3) Business Days following receipt by Financing Party and PPA Buyer 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 at the end of the 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 clauses (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the early termination of the Assignment Period, provided that (i) Financing Party shall remain

¹ PPA Seller did not agree to enter into and is not a party to the custodial agreement.
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.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. 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.

(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 Financing Party to PPA Buyer upon the 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 Buyer agrees to notify Financing Party of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. 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 13.2 (Buyer’s Representations and Warranties), 18 (Confidential Information), 19.5 (Severability), 19.7 (Counterparts), 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.6 (Mobile-Sierra), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) 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 California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction’s laws.
(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 County of Los Angeles provided, that if the federal courts do not have jurisdiction over such dispute, the Parties agree that such dispute shall be brought in the courts of the State of California, sitting in the city and county of San Francisco, and each Party submits to the jurisdiction of such courts of the State of California.

(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.

6. **U.S. Resolution Stay Provisions.**

(a) In the event that Financing Party becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “U.S. Special Resolution Regime”) the transfer from [Assignee] of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

(b) In the event that Financing Party or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“Default Right”)) under this Agreement that may be exercised against Financing Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(1) **Limitation on Exercise of Certain Default Rights Related to an Affiliate’s Entry Into Insolvency Proceedings.** Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that:

i. PPA Buyer and PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Financing Party becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “Insolvency Proceeding”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

ii. Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Financing Party becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Buyer or PPA Seller being the beneficiary of such
Affiliate Credit Enhancement in violation of any law applicable to PPA Buyer or PPA Seller, as applicable.

(2) **U.S. Protocol.** To the extent that PPA Buyer and PPA Seller each adhere to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “ISDA U.S. Protocol”), after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section [6].

(3) For purposes of this Section [6]:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Financing Party under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

GEYSERS POWER COMPANY, LLC

By: ……………………………………..
Name: 
Title: 

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

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: “PPA” means that certain Power Purchase and Sale 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; 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.8

Assigned Product: “Assigned Products” includes all (i) Energy and (ii) Green Attributes (PCC1) produced by the Facility.

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 4.7 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 Financing Party 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 Financing Party shall be a sale made at wholesale, with Financing Party reselling all such Assigned Product.

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

8 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.
Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]
Appendix 3

Form of GSG Guaranty

[Ladies and Gentlemen:

For value received, [GUARANTOR COMPANY] (the “Guarantor”), a corporation duly organized under the laws of the State of [JURISDICTION], 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 [FINANCING PARTY], a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of [JURISDICTION] (the “Company”), to Geysers Power Company, LLC (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Clean Power Alliance of Southern California 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,

[GUARANTOR COMPANY]

By: ________________________________

Authorized Officer

Exhibit D - Appendix 3 - 11
IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]
Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

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

Ladies and Gentlemen:

By the order of __________ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority ("Beneficiary"), 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 [XXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 thereof.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

Exhibit E - 1
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall
be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]
Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date___________________________
EXHIBIT F
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.6(a) of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

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<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<td>Unit SCID</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<td>Resource Type</td>
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<tr>
<td>Path 26 (North or South)</td>
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<tr>
<td>LCR Area (if any)</td>
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</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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</tr>
<tr>
<td>Run Hour Restrictions</td>
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<tr>
<td>Delivery Period</td>
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<table>
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<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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</tr>
<tr>
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<td></td>
</tr>
</tbody>
</table>

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To be repeated for each unit if more than one.

Exhibit F - 1
[SELLER ENTITY]

By:___________________________

Its:___________________________

Date:___________________________
## EXHIBIT G

### NOTICES

<table>
<thead>
<tr>
<th><strong>GEYSERS POWER COMPANY, LLC, a Delaware limited liability company</strong> (&quot;Seller&quot;)</th>
<th><strong>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</strong> (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
</tbody>
</table>
| Street: 717 Texas Avenue, Suite 11.043C  
City: Houston, TX 77002  
Attn: Contract Administration | Street: 801 S Grand, Suite 400  
City: Los Angeles, CA 90017  
Attn: Executive Director |
| Phone: (713) 830-8845  
Facsimile: (713) 830-8751  
Email: CommodityContracts@Calpine.com | Phone: (213) 269-5870  
Email: tbardacke@cleanpoweralliance.org |
| With a copy to:  
Geysers Power Company, LLC  
10350 Socrates Mine Road  
Middletown, CA 95461  
Attn: Vice President, Regional Operations, Geyser Management |  |
| With a copy to:  
Geysers Power Company, LLC  
3003 Oak Road, Suite 400  
Walnut Creek, CA 94597  
Attn: Vice President, Origination |  |
| With a copy to:  
Geysers Power Company, LLC  
717 Texas Avenue, Suite 11.043C  
Houston, TX 77002  
Attn: Chief Legal Officer |  |
| **Reference Numbers:** | **Reference Numbers:** |
| Duns: 127329212  
Federal Tax ID Number: 77-0503977 | Duns:  
Federal Tax ID Number: |
| **Invoices:** | **Invoices:** |
| Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749 | Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
E-mail: settlements@cleanpoweralliance.org |
| **Scheduling:** | **Scheduling:** TBD |

Exhibit G - 1
<table>
<thead>
<tr>
<th><strong>GEYSERS POWER COMPANY, LLC, a Delaware limited liability company</strong> (&quot;Seller&quot;)</th>
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</thead>
</table>
| **Attn:** Scheduling  
Phone: (713) 830-8612  
Facsimile: (713) 830-8722 | **Attn:**  
Phone:  
Email: |
| **Confirmations:**  
Attn: Confirmations Department  
Phone: (713) 830-8333  
Facsimile: (713) 830-8868 | **Confirmations:**  
Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
Email: nkeefer@cleanpoweralliance.org |
| **Payments:**  
Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749 | **Payments:**  
Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
E-mail: settlements@cleanpoweralliance.org |
| **Wire Transfer:**  
BNK: MUFG Union Bank, N.A.  
ABA: 122000496  
ACCT: 671226010 | **Wire Transfer:**  
BNK: River City Bank  
ABA: 121-133-416  
ACCT: XXXXXX8042 |
CONSENT AND AGREEMENT

among

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
a California joint powers authority
(Contracting Party)

and

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company
(Assignor)

and

MUFG UNION BANK, N.A.,
(First Lien Collateral Agent)

Dated as of [___]

Exhibit H - 1
This CONSENT AND AGREEMENT, dated as of [____], 20[__] (this “Consent”), is entered into by and among CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (together with its permitted successors and assigns, “Contracting Party”), MUFG UNION BANK, N.A., in its capacity as collateral agent for the First Lien Secured Parties referred to below (together with its successors, designees and assigns in such capacity, “First Lien Collateral Agent”), and GEYSERS POWER COMPANY, LLC, a limited liability company formed and existing under the laws of the State of Delaware (together with its permitted successors and assigns, “Assignor”).

RECITALS

A. Assignor owns the following geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties) (collectively, the “Projects”):

(1) The Aidlin project, an approximately 18 megawatt geothermal facility located in Sonoma County, CA.

(2) The Sonoma project, an approximately 53 megawatt geothermal facility located in Sonoma County, CA.

(3) The two-unit McCabe project, an approximately 84 megawatt geothermal facility located in Sonoma County, CA.

(4) The two-unit Ridge Line project, an approximately 76 megawatt geothermal facility located in Sonoma County, CA.

(5) The Eagle Rock project, an approximately 68 megawatt geothermal facility located in Sonoma County, CA.

(6) The Cobb Creek project, an approximately 51 megawatt geothermal facility located in Sonoma County, CA.

(7) The Big Geysers project, an approximately 61 megawatt geothermal facility located in Lake County, CA.

(8) The Sulphur Springs project, an approximately 47 megawatt geothermal facility located in Sonoma County, CA.

(9) The Quicksilver project, an approximately 53 megawatt geothermal facility located in Lake County, CA.

(10) The Lake View project, an approximately 54 megawatt geothermal facility located in Sonoma County, CA.

(11) The Socrates project, an approximately 50 megawatt geothermal facility located in Sonoma County, CA.

(12) The two-unit Calistoga project, an approximately 69 megawatt geothermal facility located in Lake County, CA.

Exhibit H - 2
(13) The Grant project, an approximately 41 megawatt geothermal facility located in Sonoma County, CA.

B. In order to finance the operation and maintenance of the Projects, Assignor has entered into that certain Credit Agreement, dated as of June 9, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), with GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings (“Holdings”), GEYSERS COMPANY, LLC, a Delaware limited liability company (“Geysers Company”), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company (“Wild Horse”) and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company (“Calistoga,” and, together with Holdings, Geysers Company and Wild Horse, each a “Guarantor” and together, the “Guarantors”), MUFG BANK, LTD., as administrative agent for the Lenders, MUFG UNION BANK, N.A., as collateral agent for the First Lien Secured Parties, and the financial institutions from time to time parties thereto in such other capacities as described therein (collectively, the “Lenders”).

C. Contracting Party and Assignor have entered into that certain [Insert description of relevant Major Project Contract(s)], dated as of [____________] [____], [___________] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

D. As security for Assignor’s obligations under the Credit Agreement and related financing documents with respect to the Loans and related obligations, Assignor has granted, pursuant to a security agreement executed by Assignor and First Lien Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, a first priority lien on all of Assignor’s right, title and interest in the Projects and other rights and interests relating thereto, whenever arising, including, without limitation, the Assigned Agreement and all of Assignor’s right, title and interest under (but not any of Assignor’s obligations, liabilities or duties with respect thereto) the Assigned Agreement;

AGREEMENT

NOW, THEREFORE, 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, notwithstanding anything in the Assigned Agreement to the contrary, as follows:

1. Assignment and Agreement.

1.1 Consent to Assignment. Contracting Party (a) is hereby notified and acknowledges that the Lenders have entered into the Credit Agreement and made the extensions of credit contemplated thereby in reliance upon the execution and delivery by Contracting Party of the Assigned Agreement and this Consent, (b) consents to the collateral assignment under the Security Agreement of all of Assignor’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Assignor’s rights to receive payment and all payments due and to become due to Assignor under or with respect to the Assigned Agreement (collectively, the “Assigned Interests”) and (c) acknowledges the right of First Lien Collateral
Agent or a Subsequent Owner (as defined below), upon written notice to Contracting Party (“Step-in Notice”), to make all demands, give all notices, take all actions and exercise all rights of Assignor under the Assigned Agreement. Assignor agrees that (a) Contracting Party may rely, without investigation, on the Step-in Notice being fully authorized and consented to by Assignor with respect to all matters set forth therein, and (b) upon Contracting Party’s receipt of such Step-In Notice, Contracting Party shall deal exclusively with of First Lien Collateral Agent with respect to all matters set forth therein.

1.2 Subsequent Owner. Contracting Party agrees that, if First Lien Collateral Agent notifies Contracting Party in writing that, pursuant to the Security Agreement, it has assigned, foreclosed or sold the Assigned Interests or any portion thereof, then (i) First Lien Collateral Agent or, subject to Section 14.3 of the Assigned Agreement, its successor, assignee designee, or any purchaser of the Assigned Interests (a “Subsequent Owner”) shall be substituted for Assignor under the Assigned Agreement and (ii) Contracting Party shall (1) recognize First Lien Collateral Agent or the Subsequent Owner, as the case may be, as its counterparty under the Assigned Agreement and (2) continue to perform its obligations under the Assigned Agreement in favor of First Lien Collateral Agent or the Subsequent Owner, as the case may be; provided that First Lien Collateral Agent or such Subsequent Owner, as the case may be, has assumed in writing all of Assignor’s rights and obligations (including, without limitation, the obligation to cure any then-existing payment and performance defaults, but excluding any obligation to cure any then-existing defaults which by their nature are incapable of being cured) under the Assigned Agreement.

1.3 Right to Cure. If Assignor defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend its performance under the Assigned Agreement (each hereinafter a “default”), Contracting Party shall not terminate or suspend its performance under the Assigned Agreement until it first gives written notice of such default to First Lien Collateral Agent and affords First Lien Collateral Agent a period of at least 30 days (or if such default is a nonmonetary default, such longer period (not to exceed 60 days) as may be required so long as First Lien Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (a) if possession of the Projects is necessary to cure such nonmonetary default and First Lien Collateral Agent has commenced foreclosure proceedings, First Lien Collateral Agent shall be allowed a reasonable time to complete such proceedings, and (b) if First Lien Collateral Agent is prohibited from curing any such nonmonetary 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 Assignor, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

1.4 No Amendments.

(a) Except to the extent Assignor is permitted under the Credit Agreement to enter into amendments of the Assigned Agreement, as to which First Lien Collateral Agent agrees Contracting Party may rely solely on Assignor’s representation without investigation, Contracting Party agrees that it shall not, without the prior written consent of First
Lien Collateral Agent, enter into any novation, material amendment or other material modification of the Assigned Agreement.

(b) Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, (i) sell, assign or otherwise transfer any of its rights under the Assigned Agreement (except as contemplated pursuant to Section 14.4 of the Assigned Agreement), (ii) terminate, cancel or suspend its performance under the Assigned Agreement (unless it has given First Lien Collateral Agent notice and an opportunity to cure in accordance with Section 1.3 hereof), (iii) consent to any assignment or other transfer by Assignor of its rights under the Assigned Agreement, or (iv) consent to any voluntary termination, cancellation or suspension of performance by Assignor under the Assigned Agreement.

1.5 Replacement Agreements. In the event the Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Assignor, Contracting Party shall, at the option of First Lien Collateral Agent exercised within 45 days after such rejection or termination, enter into a new agreement with First Lien Collateral Agent having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, and (ii) upon execution of such new agreement, First Lien Collateral Agent cures any outstanding payment and performance defaults under the Assigned Agreement, excluding any performance defaults which by their nature are incapable of being cured.

1.6 Limitations on Liability. Contracting Party acknowledges and agrees that First Lien Collateral Agent shall not have any liability or obligation to Contracting Party under the Assigned Agreement as a result of this Consent or otherwise, nor shall First Lien Collateral Agent be obligated or required to (a) perform any of Assignor’s obligations under the Assigned Agreement, except during any period in which First Lien Collateral Agent has assumed Assignor’s rights and obligations under the Assigned Agreement pursuant to Section 1.2 above, or (b) take any action to collect or enforce any claim for payment assigned under the Security Agreement. If First Lien Collateral Agent has assumed Assignor’s rights and obligations under the Assigned Agreement pursuant to Section 1.2 above or has entered into a new agreement pursuant to Section 1.5 above, First Lien Collateral Agent’s liability to Contracting Party under the Assigned Agreement or such new agreement, and the sole recourse of Contracting Party in seeking enforcement of the obligations under such agreements, shall be limited to the interest of First Lien Collateral Agent in the Project.

1.7 Delivery of Notices. Contracting Party shall deliver to First Lien Collateral Agent, concurrently with the delivery thereof to Assignor, a copy of each notice, request or demand given by Contracting Party to Assignor pursuant to the Assigned Agreement relating to (a) a default by Assignor under the Assigned Agreement, and (b) any matter that would require the consent of First Lien Collateral Agent pursuant to Section 1.4 above.

1.8 Transfer. First Lien Collateral Agent shall have the right to assign all of its interest in the Assigned Agreement or a new agreement entered into pursuant to the terms of this Consent and Section 14.3 of the Assigned Agreement; provided that such transferee assumes in
writing the obligations of Assignor or First Lien Collateral Agent, as applicable, under the Assigned Agreement or such new agreement. Upon such assignment, First Lien Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

1.9 **Refinancing.** Contracting Party hereby acknowledges that Assignor may, from time to time during the term of the Assigned Agreement, refinance the indebtedness incurred under the Credit Agreement pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing. In connection with any such refinancing, Contracting Party hereby consents to any collateral assignment or other assignment of the Assigned Agreement in connection therewith and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, Contracting Party agrees that (i) (1) references in this Consent to the “First Lien Collateral Agent” and the “First Lien Secured Parties” shall be deemed to be references to the applicable financing parties providing such refinancing, and (2) references in this Consent to the “Credit Agreement” and the “Security Agreement” shall be deemed to be references to the corresponding agreements entered into in connection with such refinancing, and (ii) if requested by Assignor, it shall enter into a new consent, substantially in the form of this Consent, in favor of the parties providing such refinancing.\(^\text{10}\)

2. **Payments under the Assigned Agreement.**

2.1 **Payments.** Contracting Party shall pay all amounts (if any) payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person, entity or account as shall be specified from time to time by First Lien Collateral Agent to Contracting Party in writing. Notwithstanding the foregoing, if any entity or person has become a Subsequent Owner pursuant to the terms hereof, then Contracting Party shall pay all such amounts directly to such Subsequent Owner or an account designated by Subsequent Owner.

2.2 **No Offset, Etc.** All payments required to be made by Contracting Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those allowed by the terms of the Assigned Agreement.

3. **Representations and Warranties of Contracting Party.** Contracting Party hereby represents and warrants, in favor of First Lien Collateral Agent, as of the date hereof, that:

(a) Contracting Party (i) 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, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby.

\(^\text{10}\) This Section 1.9 to be included at Borrowers election and with such changes as Borrower may reasonably request.
and thereby;

(b) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of Contracting Party and do not require any approvals, filings with, or consents of any entity or person which have not previously been obtained or made;

c) each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate officers of Contracting Party, and constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

d) there is no litigation, action, suit, proceeding or investigation pending or (to Contracting Party’s actual knowledge) threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Contracting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Contracting Party, or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

e) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, other than any such violation, breach or default which could not reasonably be expected to have a material adverse effect on Contracting Party’s ability to perform its obligations under the Assigned Agreement;

f) neither Contracting Party nor, to Contracting Party’s actual knowledge without investigation, any other party to the Assigned Agreement, is in default of any of its obligations thereunder;

(g) to Contracting Party’s actual knowledge, and without investigation with respect to matters pertaining to Assignor, (i) no event of force majeure exists under, and as defined in, the Assigned Agreement, and (ii) 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 Contracting Party or Assignor to terminate or suspend its obligations under the Assigned Agreement; and

(h) the Assigned Agreement and this Consent are the only agreements between Assignor and Contracting Party with respect to the Project.
Each of the representations and warranties set forth in this Section 3 shall survive the execution and delivery of this Consent and the Assigned Agreement for a period of one year from the date hereof.

4. Miscellaneous.

4.1 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Assignor:

Geysers Power Company, LLC,
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Contracting Party:

Clean Power Alliance of Southern California
801 S Grand, Suite 400
Los Angeles, CA 90017
Telephone: (213) 269-5870
Attention: Executive Director
Email: tbardacke@cleanpoweralliance.org

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by prepaid telegram or by facsimile or (e) if sent by other electronic means (including electronic mail) confirmed by any means in which a notice or other communications may be provided hereunder (including electronic mail). Any party may change its address for notice hereunder by giving of 30 days’ notice to the other parties in the manner set forth hereinabove.

Exhibit H - 8
4.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) 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, Contracting 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. Contracting Party 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 Contracting Party at its notice address provided pursuant to Section 4.1 hereof. Contracting 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.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Consent by facsimile or “pdf” transmission shall be as effective as delivery of a manually signed original.

4.4 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.

4.5 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.

4.6 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Contracting Party and First Lien Collateral Agent.

4.7 Successors and Assigns. This Consent shall bind and benefit Contracting Party, First Lien Collateral Agent, and their respective successors and assigns.

4.8 Third Party Beneficiaries. Contracting Party and First Lien Collateral Agent hereby acknowledge and agree that the First Lien Secured Parties are intended third party beneficiaries of this Consent.
4.9 **WAIVER OF TRIAL BY JURY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTING PARTY, ASSIGNOR AND COLLATERAL AGENT 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.

4.10 **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 between the parties hereto in respect of 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 (including, without limitation, the Assigned Agreement), the terms, conditions and provisions of this Consent shall prevail.

4.11 **Termination of Consent.** This Consent shall terminate upon the earliest to occur of (a) the termination or cancellation of the Assigned Agreement in accordance with its terms and in accordance with the terms of this Consent (it being understood that this Consent shall not terminate but shall remain in effect in the circumstances described in Section 1.5 above in respect of any new agreement entered into in accordance with such Section), (b) the expiration of the term of the Assigned Agreement and (c) the termination of the Security Agreement in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company,
as Assignor

By: ____________________________  
  Name:  
  Title:  

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA  
A California joint powers authority,
as Contracting Party

By: ______________________________  
  Name:  
  Title:  

Accepted and Agreed to:

MUFG UNION BANK, N.A.,  
solely in its capacity as First Lien Collateral Agent

By: ________________________  
  Name:  
  Title:  

By: ________________________  
  Name:  
  Title:  

Exhibit H - 11
PAYMENT INSTRUCTIONS

Pay to: MUFG Union Bank, N.A.
ABA Number: 122000496
Account Number: 6712260101
Account Name: Geysers Power Co. – Revenue Acct.
Attention: Corporate Trust
Reference: Corp Trust Admin – San Francisco
EXHIBIT I

CPM Adjustment Factors

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<td>November</td>
<td>50%</td>
</tr>
<tr>
<td>December</td>
<td>50%</td>
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RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Geysers Power Company, LLC, a Delaware limited liability company

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

Description of Facility: As set forth in Exhibit A.

Milestones:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
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<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Completed</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [X] Mitigated Neg Dec, [ ] EIR</td>
<td>Completed</td>
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<tr>
<td>Executed Interconnection Agreement</td>
<td>Completed</td>
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<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Drilling Start Date</td>
<td></td>
</tr>
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<td>Expected Date of CAISO Commercial Operation</td>
<td>Completed</td>
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<td>Expected Commercial Operation Date</td>
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Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

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<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
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<tbody>
<tr>
<td>1</td>
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<td>3</td>
<td>157,680</td>
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<td>4</td>
<td>157,680</td>
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Guaranteed Capacity: 18 MW of total Facility capacity

Renewable Rate:

<table>
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<th>Contract Year</th>
<th>Renewable Rate ($/MWh)</th>
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<tbody>
<tr>
<td>1 – 20</td>
<td>$157,680/MWh (flat) with no escalation</td>
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Pre-COD Product Rate: $157,680/MWh

Capacity Rate:
## Contract Year Capacity Rate ($/kW-mo.)

<table>
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<tr>
<th>Contract Year</th>
<th>Capacity Rate ($/kW-mo.)</th>
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<tbody>
<tr>
<td>1 – 20</td>
<td>$[blank] kW-month</td>
</tr>
</tbody>
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**Monthly RA Capacity Payment:** Capacity Rate x Designated RA Capacity x 1,000 = $[blank]/month.

**Guaranteed Drilling Start Date:** [blank]

**Guaranteed Commercial Operation Date:** June 01, 2026

**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

**Scheduling Coordinator:** Seller

**Security Amounts:**

- **Development Security:** $90/kW of Guaranteed Capacity.
- **Performance Security:** $90/kW of Installed Capacity.
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<th>Page</th>
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<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
<td>17</td>
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</table>

<table>
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RENEWABLE POWER PURCHASE AGREEMENT

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

RECITALS

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

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

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility’s NQC will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.Decision 21-06-035 (as may be revised by further decisions) in the category of generating resources that are zero emitting, with at least an eighty percent (80%) capacity factor;

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 3.1211(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.
“Assignment Agreement” has the meaning set forth in Section 14.5.

“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 Default” means an Event of Default of Buyer.

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

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

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

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

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

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

“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 in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption of any new Law; (b) any material change in any Law or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the issuance of any guideline or directive having the force of law by any Governmental Authority. A Change in Law shall include (i) any change to a Resource Adequacy Ruling, (ii) any order, decision, resolution, rule, regulation, or other final and non-appealable determination of the CPUC, (iii) any change in the CAISO Tariff or any document included in the definition thereof, and (iv) any state or federal order issued by a Governmental Authority that has a material adverse effect (other than Seller’s construction or operation of the Facility).

“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 3.4211(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.4211.

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

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

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

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

“Contract Quantity” means the amount of Product (in MWs) set forth on the Cover Sheet, which Seller has committed to deliver to the Delivery Point on behalf of Buyer pursuant to this Agreement.

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

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.
“CPM Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit P.

“CPM Price” is an amount equal to (i) the CPM Soft Offer Cap (or its successor) multiplied by (ii) the applicable CPM Adjustment Factor for the applicable RA Shortfall Month; provided, if the CAISO begins using a shaped or weighted price for purposes of setting the CPM Soft Offer Cap, the Parties shall thereafter use the full amount of the CPM Soft Offer Cap (without applying the CPM Adjustment Factor) as the CPM Price for all RA Shortfall Months.

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“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 Seller or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the Day-Ahead or Real-Time Forecast, as applicable, during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any abnormal condition 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 CAISO or 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 Market” has the meaning set forth in the CAISO Tariff.

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

“Deficient Month” has the meaning set forth in Section 4.8(e).

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

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

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

“Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide as Replacement RA. Designated RA Capacity shall be subject to adjustment for Force Majeure Events or Curtailment Orders as further detailed in Section 3.74.6 or change in market design as further detailed in Section 19.12.

“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.

“Disclosing Party” has the meaning set forth in Section18.2.

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

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

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

“Economic Benefit” has the meaning set forth in Section 3.4.

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

“Effective Flexible Capacity” or “EFC” means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.
“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point associated with delivery of Facility Energy.

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

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

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

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

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

“Expected Drilling 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, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5 of Exhibit B, if applicable.

“Facility” means the geothermal generating facilities 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; provided that any additional equipment or facilities installed at the geothermal generating facilities that are not related to Seller’s delivery of Facility Energy to the Delivery Point or Seller’s other commitments under this Agreement, including but not limited to any carbon capture equipment, is not included within the definition of Facility for purposes of this Agreement.

“Facility Energy” means the Energy generated by and metered from the Facility during any Settlement Interval or Settlement Period delivered to the Delivery Point on Buyer’s behalf, not to exceed 18 MWh AC in any hour.

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

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.
“**Financial Close**” means either (a) Seller has received all internal approvals to self-finance the project without third-party financing, or (b) 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).

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

“**Flexible RAR**” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

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

“**Future Environmental Attributes**” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, (ii) tax benefits, credits or offsets associated with the development of a federal carbon tax, or (iii) 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., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity 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 and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.
“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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.

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

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

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

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

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

“**Indemnifying Party**” has the meaning set forth in Section 16.1.
“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point (i.e., measured at the 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 H hereto.

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

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

“Interconnection 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 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.

“Local Capacity Area Resource” 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., NP15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7. “Material Permits” means all permits required for Seller to commence construction.

“Meter Service Agreement” has the meaning set forth in the CAISO Tariff.

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

“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.

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

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

“New Facility Incentives” has the meaning set forth in Section 3.4.
“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).

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

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

“Performance Measurement Period” means each Contract Year.

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

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person (on a consolidated basis with its Affiliates) that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation 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).

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

“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.

“Pre-COD Product” means, during the time period between the Drilling Start Date and the Commercial Operation Date, incremental bundled geothermal energy made available from the Facility as the result of the construction of new steam field wells which includes (a) Facility Energy, (b) all associated Green Attributes, and (b) all associated Capacity Attributes.

“Pre-COD Product Rate” has the meaning set forth on the Cover Sheet.

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

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

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

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

“RA Compliance Showing” means the RAR compliance or advisory showings (or similar or successor showings) an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.
“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer 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 first day of the first Showing Month for Buyer which actually includes the Facility’s Net Qualifying Capacity or any Replacement RA, if applicable).

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

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

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

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

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

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

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

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

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

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer.
“Requested Confidential Information” has the meaning set forth in Section 18.2.

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

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

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

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

“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 4.8(a).

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

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

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

“Settlement Point” means NP-15.

“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.

“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.

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

“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, (iii) to preserve Transmission System reliability, or (iv) in connection with a Public Safety Power Shutoff (as defined in CPUC Decisions D.21-06-034 and D.21-06-014, or any subsequent superseding applicable Law) or similar events that impact the PTO or the Facility.

“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.

“Tax Credit Percentage” means the tax credit percentage, applicable to property eligible under the Inflation Reduction Act of 2022 (or any similar successor legislation) for which Seller, as the owner of the Facility, is eligible.
“Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by tax credits and/or tax depreciation and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to the Project or (ii) contemplated by Section 50(d)(5) of the Internal Revenue Code of 1986, as amended (a pass-through lease).

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

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

“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 on the Transmission System.

“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 Calpine Corporation, a Delaware corporation.

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

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

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

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

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

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

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

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

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

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

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

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

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

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

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

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

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“Contract Term”); provided, 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, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof within five (5) Business Days of receipt thereof; provided, Buyer may waive any condition precedent in writing and in its sole discretion:

(a) Seller shall have delivered to Buyer (i) a completion certificate from an officer of Seller substantially in the form of Exhibit H-1, or (ii) if any Governmental Authority requires a completion certificate from an independent engineer, a certificate substantially in the form of Exhibit H-2;

(b) Seller has obtained Full Capacity Deliverability Status for the Installed Capacity;

(c) 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 such agreements delivered to any Governmental Authority that has specifically requested a copy;

(d) 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 such agreements delivered to any Governmental Authority that has specifically requested a copy;
(e) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all material conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

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

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

(h) 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, QREqualified reporting entity 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;

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

(j) The Facility is providing Resource Adequacy Benefits, in the amount of the Installed Capacity, for the month in which the Delivery Term commences;

(k) Seller has delivered to Buyer an officer’s certificate stating 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

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

2.3 Development; Drilling; 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 Drilling Start Date, and (ii) each calendar month from the first calendar month following the Drilling 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. The form of the Progress Report is set forth in Exhibit E. 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.

(a) 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 Contract Quantity at the Renewable Rate and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Contract Quantity. Subject to the Operating Restrictions, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product; provided, no such re-sale or use shall increase Seller’s obligations or relieve Buyer of any obligations hereunder.

(b) During the Delivery Term, Buyer shall make the Monthly RA Capacity Payment to Seller, in arrears, after the applicable Showing Month, in accordance with Article 8; provided, any RA Deficiency Amount for the applicable Showing Month owed pursuant to Section 3.8 shall be applied as a credit to Buyer against the Monthly RA Capacity Payment otherwise owing.

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
3.3 **Inter-SC Trades.** For each hour of the month, Seller shall Schedule to Buyer in the Day-Ahead Market an amount of Energy equal to the forecasted Facility Energy at NP-15 using an Inter-SC Trade.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives; *provided*, if the *Inflation Reduction Act of 2022* (or any similar successor legislation) provides additional financial incentives for which the Facility is eligible (“**New Facility Incentives**”), then Seller shall use commercially reasonable efforts to cause the New Facility Incentives to be available for the Facility, and if Seller realizes an economic or monetary benefit from the New Facility Incentives with respect to the Facility in the form of a Tax Credit Percentage of or more on the entire amount of Seller’s capital expenditures associated with this Agreement (“**Economic Benefit**”), upon Seller’s realization of any such Economic Benefit, the Renewable Rate shall be reduced (one time during the Contract Term) to $/MWh for the remainder of the Contract Term and the Capacity Rate shall be reduced (one time during the Contract Term) to $/kW-month for the remainder of the Contract Term. Seller shall provide Notice to Buyer within thirty (30) days after realizing any Economic Benefit, and the price reduction will become effective on the first day of the month following Buyer’s receipt of such notice.

For purposes of determining when an Economic Benefit is realized under this Section 3.4, realization will have been deemed to have occurred upon the earliest occurrence of any of the following: (i) the closing of any Tax Equity Financing by Seller, Seller’s Ultimate Parent or any Seller Affiliate, (ii) the transfer of any income tax credits generated as a result of *Inflation Reduction Act of 2022* (or any similar successor legislation), (iii) the claiming of any income tax credits on the federal income tax return (on the date such return is filed) of any entity, or (iv) the date upon which Seller realizes an Economic Benefit not otherwise listed in this Section 3.4.

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. Any such Future Environmental Attributes shall be limited to only those environmental attributes relating to the Contract Quantity that Buyer will receive under this Agreement. 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 Renewable Rate. 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.
If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement. Seller shall not have any obligation to secure or transfer such Future Environmental Benefits until such matters have been agreed; provided further, (A) Seller shall not use for its own account, or assign or otherwise transfer to a third party, and Future Environmental Benefits, and (B) upon the Parties agreement on the matters addressed in this Section 3.5(b), Seller shall transfer to Buyer all Future Environmental Benefits dating back to the time they were first created, if applicable.

3.6 Pre-COD Product. Prior to the Commercial Operation Date, Seller shall notify Buyer of the availability of the Pre-COD Product. If and to the extent the Facility generates Pre-COD Product prior to the Commercial Operation Date, Seller shall sell and Buyer shall purchase from Seller all Pre-COD Product on an as-available basis. As compensation for such Pre-COD Product, Buyer shall pay Seller the Pre-COD Product Rate. The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6; provided that all Capacity Attributes associated with the Pre-COD Product must meet the requirements of Section 3.7 and all Green Attributes associated with the PRE-COD Product must meet the requirements of Sections 3.9 and 3.10.

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

(a) Throughout the Delivery Term and subject to Section 3.4211, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes associated with the Contract Quantity.

(b) Throughout the Delivery Term and subject to Section 3.4211, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits, including Flexible Capacity (if applicable), to Buyer. Throughout the Delivery Term, and subject to Section 3.4211, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.4211, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

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

3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer; provided, in the event of a change of Law implementing an unforced capacity (UCAP) standard applicable to Seller, Section 19.12 shall apply.

(b) RA Deficiency Amount Calculation. The “RA Deficiency Amount” shall be equal to the product of (i) the difference, expressed in kW, of (A) the Designated RA Capacity minus (B) the amount of Capacity Attributes delivered in such Showing Month, multiplied by the CPM Price.

(c) CEC Certification and Verification. Subject to Section 3.1211 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the RPS Eligibility Guidebook (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.9 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.

3.10 California Renewables Portfolio Standard. Subject to Section 3.11, Seller shall also take all other actions necessary to ensure that the Facility Energy 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.
3.11 **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 explicitly made subject to this Section 3.11, 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 Contract Quantity ("**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 3.11 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 (as may be revised and updated by Seller in its reasonable discretion).

(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.

3.12 **Facility 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 all applicable CAISO requirements and the terms of this Agreement. Seller retains all rights to the Facility and to use and dispose of Product before and after the Delivery Term. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Pre-COD Product prior to the Delivery Term and 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 associated with Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

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

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

4.3 **Forecasting.** Seller shall comply with all applicable obligations under the CAISO Tariff that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder. To the extent Seller anticipates delivering an amount of Product that is less than the Contract Quantity for any of the reasons set forth in Section 4.56, Seller shall expeditiously provide Buyer with notice of such reduction, along with an explanation of the cause and expected duration of the reduction.

4.4 **Dispatch Down/Curtailment.** 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. Any Curtailment Order shall not reduce Seller’s delivery of Facility Energy by more than Buyer’s pro rata share.

4.5 **[Intentionally Omitted].**

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G.
(a) **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.

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

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

(d) **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 reduction in delivery of Product pursuant to this Section 4.6 shall be applied equally across each of the 24 hours in the applicable Settlement Period, and shall not reduce the delivery of Facility Energy by more than Buyer’s pro rata share.

**4.7 Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy 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 \( \frac{1}{\text{Annual Expected Energy}} \) of the annual Expected Energy for the applicable Contract Year 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 amount of Facility Energy that 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 NP 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 and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

**4.8 WREGIS.** Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS
Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any error or omission of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or
omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller 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.

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

(i) Seller’s obligations under Sections 3.10, 4.8(g) and 4.8(h) shall be subject to Section 3.4211, the term “Project” as used in Section 3.10 shall refer to the “Facility” as defined herein, and the term “commercially reasonable efforts” as used in Section 3.409 and Section 4.10(g) means efforts consistent with and subject to Section 3.4211.

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 the Delivery Point 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 the Delivery Point and purchase by Buyer of Product that are imposed on Product at and after its delivery to the Delivery Point on behalf of Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.
5.2 **Cooperation.** Each Party shall use commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6**  
**MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product to the Delivery Point 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, and repair 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 and would materially impact Seller’s obligations to deliver Product pursuant to this Agreement, Seller shall take actions required by applicable Law and Prudent Electrical Practices to prevent such damage or injury and shall give Buyer’s emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 [Intentionally Omitted].

**ARTICLE 7**  
**METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. The Facility Meter shall be operated pursuant to applicable calculation methodologies and maintained at Seller’s cost. The Facility Meter shall be kept under seal, such seal 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.

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

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including CAISO metering and transaction data to the extent available 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 Facility Energy, Pre-COD Product, Replacement RA, and Replacement Product delivered to Buyer (if any), and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

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

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-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 (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under
this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages, in each case of a determined amount, 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 Performance Security for another permitted form (i.e., cash or Letter of Credit, as applicable).

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, provided that the foregoing requirements shall not apply to any Letter of Credit posted by Seller in favor of Buyer pursuant to Sections 8.7 or 8.8.

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) and without the failure of the claiming Party to perform a material obligation under this Agreement or negligence of the claiming Party 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; Public Safety Power Shutoff; fire; volcanic eruption; sustained drought in Lake, Sonoma or Mendocino counties that (i) begins after the Effective Date, (ii) is materially more severe than the drought conditions that have existed during the ten (10) year period prior to the Effective Date as determined by the National Integrated Drought Information System, and (iii) which materially impacts power production at the Facility, as verified in a written report prepared by a Licensed Professional Engineer; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events or natural catastrophes; an act of public enemy;
war; blockade; civil insurrection; riot; civil disturbance; actions or inactions by a Governmental Authority (including a change in applicable Law, but excluding Seller’s compliance obligations and as set forth in 10.01(c) below), 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 actions or inactions by Governmental Authority (including changes in Law) that render a Party’s performance of this Agreement at the Renewable Rate 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) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of steam, water or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (v) 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; or (vi) any equipment failure except if such equipment failure is 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 order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after the claiming Party knew or should reasonably have known of the claimed Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit T, (a) provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, 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.

10.4 Termination Following Force Majeure Event or Development Cure Period.
(a) If the cumulative extensions granted under the Development Cure Period plus the payment of COD Delay Damages equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays but for the one hundred eighty (180) day limitation, 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 plus the full amount of COD Delay Damages paid by Seller, 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 material obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) to suspend performance; and

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

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

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

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

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“**Termination Payment**”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult...
or impossible to predict with certainty, (ii) the Termination Payment described in this Section 0(11.3)(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 0(11.3)(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment within such initial sixty (60) day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Contract Quantity to a party other than Buyer for a period of two (2) years following the Early Termination Date, 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 so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.
11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

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

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, Error! Reference source not found., 11.2 AND 0.11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

(f) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, will be applied for and reasonably expected to be received prior to the Commercial Operation Date) and all material conditions thereof that are capable of being satisfied have been satisfied and shall be in full force and effect.

(g) 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 Drilling Start Date to be later than the Guaranteed Drilling Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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

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

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

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

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

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

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

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

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

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

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

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

13.4 Workforce Development. The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Drilling Start Date, Seller shall ensure that work performed in connection with new construction of the Facility (with the exception of the drilling work) 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. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with the requirements of this Section 13.4.
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 such assignment or delegation made without such written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S (“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:

(a) the assignee is a Permitted Transferee;

(b) Seller shall give Buyer Notice within fifteen (15) Business Days after the date of such assignment; and

(c) Seller provides Buyer a written agreement signed by the Person to which Seller has assigned 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.

14.4 [Intentionally Omitted]

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 (“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 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 Error! Reference source not found..

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 forty-five (45) days of initiating such discussions, or within sixty (60) 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, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.4 **Venue.** In the event of any legal action to enforce or interpret this ContractAgreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

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 to the extent its damages resulting from its 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. 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 an amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of Two Million Dollars ($2,000,000), including contractual liability in said amount, covering Seller’s obligations under this Agreement in accordance with the policy’s terms and conditions (which such policy shall be materially consistent with market-standard insurance policies), and including Buyer as an additional insured but only with respect to the indemnity obligations under this Agreement; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be included within the
limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. The Parties agree to negotiate in good faith the option for Seller to satisfy a portion of its insurance obligations related to its indemnification obligations under this Agreement through self-insurance on terms and conditions mutually agreeable to the Parties.

(b) **Employer’s Liability Insurance.** Seller, if it has employees, shall maintain at all times during the Contract Term employers’ liability insurance coverage in accordance with applicable requirements of Law. Employers’ Liability insurance shall include a limit of 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 coverage in accordance with applicable requirements of Law.

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

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

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

(g) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such 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 include 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, 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.

[SELLER]

By: __________________________
Name: _________________________
Title: _________________________

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

By: __________________________
Name: _________________________
Title: _________________________
EXHIBIT A

FACILITY DESCRIPTION

1. Existing Generating Facility Description.

The power plants in The Geysers Known Geothermal Resource Area (“KGRA”) have been generating electricity for California since 1960. Geysers Power Company, LLC (“GPC”), a Calpine Corporation (“Calpine”) affiliate, has more than 35 years of experience at The Geysers, and manages the largest operations there with thirteen operating power plants.

Each power plant consists of a low-pressure steam turbine or turbines, a generator(s), condenser, cooling tower, air pollution abatement system, pumps and other auxiliary equipment, transformers and circuit breakers to connect the facilities to the CAISO controlled grid. Each Geysers power plant is connected to one of three PG&E owned transmission lines: Geysers-Eagle Rock 115 kV, Geysers-Fulton 230 kV, or Geysers-Lakeville 230 kV transmission.

The steam field consists of more than 400 wells and over 80 miles of steam pipelines which deliver the geothermal steam to the power plants. This extensive pipeline network allows the condensed steam (condensate) and supplemental water from within the Geysers, and from treated effluent pipelines from Santa Rosa and from Lake County, to be injected throughout the steam field to maintain and enhance steam production.

2. Description of Incremental Geothermal Capacity.

Seller intends to build out the permitted North Geysers area known as the Wildhorse Geothermal Resource Area by drilling several new production and injection wells to increase overall facility output by 25 MW. The additional steam will be connected to the existing steamfield infrastructure via a new steam gathering system. Seller will utilize existing and proven turbine/generators while expanding its steam dominated geothermal resource to maximize facility output and efficiency to increase NQC.

3. Site Description.

The Geysers KGRA is a forty square mile area of Sonoma and Lake Counties, approximately seventy miles north of San Francisco. The land in the Geysers KGRA is zoned for geothermal development and has had geothermal development within it for more than 50 years. GPC manages more than 29,000 acres under more than 150 public and private mineral and land leases in the Geysers KGRA as part of its extensive geothermal operations. Those leases provide for the continued control of site access and the steam resource beneath the ground by GPC for as long as commercial production of steam occurs.


Note that because of its rural location, individual Geysers power plants do not have their own street or mailing address. The mailing address for the Geysers Power Plant is:
10350 Socrates Mine Road
Middletown, CA 95461
## Facilities Comprising Calpine’s Geysers Power Plant

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<td>GYS5X6_7_UNITS</td>
<td>60002A</td>
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<td>Geysers Units 7&amp;8</td>
<td>RIDGE LINE P.P. (CPN 7&amp;8)</td>
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<td>Geysers Unit 11</td>
<td>EAGLE ROCK PP (CPN-11)</td>
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<td>GEYS12_7_UNIT12</td>
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<td>SULPHUR SPRINGS PP (CPN-14)</td>
<td>GEYS14_7_UNIT14</td>
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<td>QUICKSILVER PP (CPN-16)</td>
<td>GEYS16_7_UNIT16</td>
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<td>Geysers Unit 18</td>
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<td>Geysers Unit 20</td>
<td>GRANT P.P. (CPN-20)</td>
<td>GEYS20_7_UNIT20</td>
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<td>W126</td>
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EXHIBIT B

FACILITY DRILLING AND COMMERCIAL OPERATION

1. **Drilling and Construction of the Facility.**

   (a) **“Drilling Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility execution of an engineering, procurement, and construction contract (if any) issuance of a notice to proceed under such contract (if any), mobilization to Site and the start of physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Drilling 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 “**Drilling Start Date**.” Seller shall cause Drilling Start to occur no later than the Guaranteed Construction Drilling Start Date.

   (b) Seller may extend the Guaranteed Drilling Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Drilling 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 Drilling 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 Drilling Start Date. If Seller achieves Construction Start prior to the Guaranteed Drilling 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 Drilling Start prior to the Guaranteed Drilling 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 [ ] 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 Drilling 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 (i) the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays, and (iii) such delays do not run concurrently:

   (a) a Force Majeure Event occurs; or

   (b) the Interconnection Facilities or Reliability Network Upgrades as identified in the Interconnection Agreement 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.

Seller shall submit any claim for Development Cure Period delays within (x) three (3) Business Days of the applicable milestone in the case of (b) above, and (y) fourteen (14) days after the claiming Party knew or should have known of the claimed Force Majeure Event in the case of (a) above, in substantially the form set forth in Exhibit T. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) 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 H 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 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.** During the Delivery Term, Buyer shall pay Seller the following amounts for each MWh of Facility Energy during a Contract Year up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year:

   (i) For each MWh of Facility Energy in each Settlement Interval, the Renewable Rate.

(b) **Pre-COD Product.** Pre-COD Product is compensated in accordance with Section 3.6.

(c) **Tax Credits.** Other than as set forth expressly in Section 3.4, the Parties agree that the Renewable Rate is not subject to any further 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.

(d) **Monthly RA Capacity Payment:** Capacity Rate x Designated RA Capacity x \( \frac{1,000}{1,000} = \text{[Redacted]} \)/month.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller to be Scheduling Coordinator. During the Delivery Term, Seller shall act as Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point on behalf of Buyer. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) CAISO Market Participation. During the Delivery Term, Seller, as the party responsible for all Scheduling Coordinator activities with respect to the Facility, shall submit bids into the Day-Ahead Market and the Real-Time Market. Seller’s bids into the Day-Ahead Market and the Real-Time Market shall be consistent with the Day-Ahead or Real-Time Forecasts, as applicable, and consistent with Prudent Operating Practice.

(c) CAISO Costs and CAISO Revenues. As the Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues; provided, any net costs or charges assessed by the CAISO which are due to a Buyer Default shall be Buyer’s responsibility. The Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller’s responsibility.

(d) Future Changes to Scheduling Protocols. During the Delivery Term, the Parties agree to discuss in good faith requested changes by either Party to the CAISO scheduling procedures set forth in this Agreement.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller’s (or its SC’s) customer market results interface for the Facility.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Description of any material planned changes to the Facility or the Site.

3. Summary of activities during the previous calendar quarter or month, as applicable.

4. Forecast of activities scheduled for the current calendar quarter.

5. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

6. List of issues (if any) that are reasonably likely to affect Seller’s Milestones.

7. Status report of start-up activities including a forecast of activities ongoing and after start-up.

8. 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.

9. Pictures, if available, 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.

10. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

11. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

MONTHLY EXPECTED AVAILABLE FACILITY CAPACITY

[MW Per Hour] – [Insert Month]

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

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

Exhibit F-1

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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   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

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

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

where:

- **A** = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- **B** = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- **C** = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes. Buyer shall use commercially reasonable efforts to determine, in good faith, the market value of Replacement Green Attributes on the basis of quotations from at least three (3) brokers of Replacement Green Attributes. Such market value shall be the average of the three (3) quotations. If, after using commercially reasonable efforts, Buyer is not able to obtain at least three (3) such market quotations, Buyer may, in good faith and in a commercially reasonable manner, calculate such market value. Buyer is not required to enter into a replacement transaction in order to determine this amount.
- **D** = the Renewable Rate, in $/MWh

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

As used above:

- **Adjusted Energy Production** shall mean the sum of the following: Facility Energy + Lost Output + Replacement Product.

- **Replacement Energy** means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.
“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

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

No payment shall be due if the calculation of (a) (A - B), (b) (C - D), or (c) [(A – B) * (C – D)] 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-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [Officer] ("Officer") 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]_____, Officer 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. The installed capacity of the Facility is __ MW AC ("Installed Capacity").

3. The Installed Capacity of not less than ninety-five percent (95%) of the Guaranteed Capacity.

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

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

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on ______[DATE]____.

EXECUTED by [OFFICER OF SELLER]

this ________ day of _____________, 20__. 

[OFFICER OF SELLER]

By: ____________________________

Its: ____________________________

Date: ___________________________
EXHIBIT J

FORM OF DRILLING START DATE CERTIFICATE

This certification of Drilling 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) Drilling 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 Drilling Start is attached hereto.

(2) The Drilling Start Date occurred on _____________ (the "Drilling Start Date"); and

(3) The precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____________________________________________________________________

(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: ________________________________

Its: ________________________________

Date: ______________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ] [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date___________________________
EXHIBIT L

FORM OF ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among Geysers Power Company, LLC, a Delaware limited liability company (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [FINANCINGパーティー], a [JURISDICTION] limited liability company (“Financing Party”), 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. To the extent there is any inconsistency between this Assignment Agreement and the PPA as to any obligations not expressly provided herein, the terms of the PPA shall prevail.

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

1. Limited Assignment and Delegation.

   (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All 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 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”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products and PPA Buyer agrees that it will remain jointly and severally responsible as primary obligor (and not as surety) for the payment of all Delivered Product Payment Obligation; 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 Financing Party consistent with Section 1(d) hereof). To the extent Financing Party 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 remains responsible for such payment and that it will be an Event of Default pursuant to Section 11.1 if PPA Buyer does not make such payment within five (5) Business Days of receiving Notice of such non-payment from PPA Seller. In addition, PPA Buyer agrees that, regardless of receiving any such notice, it will indemnify and hold PPA Seller harmless from and against all losses, costs, damages, liabilities and expenses of any kind as a result of or arising from the assignment, transfer, conveyance and delegation described in clauses (a) and (b) of this paragraph 1 and from the failure
of Financing Party to make any payment in respect of Delivered Product Payment Obligation as and when due under the PPA (and disregarding the effects of any stay or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws), whether due to bankruptcy, insolvency or any other cause.

(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) title to Assigned Product will pass from PPA Seller to Financing Party upon delivery by PPA Seller of Assigned Product in accordance with the PPA (ii) PPA Buyer will provide copies to Financing Party 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 Financing Party of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1, 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 Financing Party; and (iv) PPA Buyer will provide copies to Financing Party of any other information reasonably requested by Financing Party relating to Assigned Products, provided that any failure to provide such information shall not excuse the performance of any other Party hereunder.

(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 valid, lien-free receivables due from PPA Buyer for Assigned Products, Financing Party may transfer good, marketable and lien-free title to such receivables to PPA Seller and, so long as PPA Buyer does not have any defense in respect of such receivables other than a defense that would have arisen under the PPA if this Assignment Agreement were not in effect, apply the face amount thereof as a reduction to any Delivered Product Payment Obligation owed by Financing Party to PPA Seller; provided that no such transfer or application shall reduce or limit PPA Buyer’s obligations under Section 1(b) above.

(f) On or before the commencement of the Assignment Period, [GUARANTOR COMPANY] (“Guarantor”), will issue, in favor of PPA Seller, a guaranty of Financing Party’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“Guaranty”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.

(g) All payments due to PPA Buyer in respect of Section 3.2 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
Financing Party, PPA Buyer and [Custodian] have entered into for the administration of payments due hereunder.

(h) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Financing Party and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.

(i) Without in any way affecting the joint and severally liability of PPA Buyer as primary obligor, or the other obligations of PPA Buyer, as specified herein or under the PPA, in the event the PPA or the Assigned Product Rights are rejected, disaffirmed, repudiated or terminated (or any in combination), in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Financing Party, PPA Buyer shall, at the option of PPA Seller exercised within 30 days after such rejection, disaffirmation, repudiation or termination, enter into a new agreement with PPA Seller having identical terms as the PPA described on Appendix 1 (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA described on Appendix 1.

(j) Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs.

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 three (3) Business Days following receipt by Financing Party and PPA Buyer 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 at the end of the 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 clauses (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the 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.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. 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.

(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 Financing Party to PPA Buyer upon the 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 Buyer agrees to notify Financing Party of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. 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 13.2 (Buyer’s Representations and Warranties), 18 (Confidential Information), 19.5 (Severability), 19.7 (Counterparts), 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.6 (Mobile-Sierra), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) 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 California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction’s laws.

(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 County of Los Angeles provided, that if the federal courts do not have jurisdiction over such dispute, the Parties agree that such dispute shall be brought in the courts of the State of California, sitting in the city and county of San Francisco, and each Party submits to the jurisdiction of such courts of the State of California.

(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.


(a) In the event that Financing Party becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “U.S. Special Resolution Regime”) the transfer from [Assignee] of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

(b) In the event that Financing Party or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“Default Right”)) under this Agreement that may be exercised against Financing Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(1) Limitation on Exercise of Certain Default Rights Related to an Affiliate’s Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that:

i. PPA Buyer and PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of Financing Party becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “Insolvency Proceeding”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

ii. Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Financing Party becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Buyer or PPA Seller being the beneficiary of such
(2) **U.S. Protocol.** To the extent that PPA Buyer and PPA Seller each adhere to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “ISDA U.S. Protocol”), after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section [6].

(3) For purposes of this Section [6]:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of Financing Party under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

GEYSERS POWER COMPANY, LLC

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: .............................................  By: .............................................
Name:                                   Name:
Title:                                  Title:

[FINANCING PARTY]

By: .............................................
Name:                                   Name:
Title:                                  Title:

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

[ISSUER]

By: .............................................
Name:                                   Name:
Title:                                  Title:
Appendix 1

Assigned Rights and Obligations

PPA: “PPA” means that certain Power Purchase and Sale 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; 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.8

Assigned Product: “Assigned Products” includes all (i) Energy and (ii) Green Attributes (PCC1) produced by the Facility.

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 4.7 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 Financing Party 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 Financing Party shall be a sale made at wholesale, with Financing Party reselling all such Assigned Product.

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

---

8 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.
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, [GUARANTOR COMPANY] (the “Guarantor”), a corporation duly organized under the laws of the State of [JURISDICTION], 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 [FINANCING PARTY], a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of [JURISDICTION] (the “Company”), to Geysers Power Company, LLC (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Clean Power Alliance of Southern California 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,

[GUARANTOR COMPANY]

By: ________________________________

Authorized Officer
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

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<tr>
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<tbody>
<tr>
<td>Location</td>
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<td>CAISO Resource ID</td>
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<tr>
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<td>Resource Type</td>
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<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
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<tr>
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<tr>
<td>LCR Area (If any)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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</tr>
<tr>
<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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<tr>
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1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: __________________________
Its: _________________________
Date: _________________________
EXHIBIT N

NOTICES

<table>
<thead>
<tr>
<th>SELLER’S NAME</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
</tbody>
</table>
| Street: 717 Texas Avenue, Suite 11.043C  
City: Houston, TX 77002  
Attn: Contract Administration | Street: 801 S Grand, Suite 400  
City: Los Angeles, CA 90017  
Attn: Chief Executive Officer |
| Phone: (713) 830-8845  
Facsimile: (713) 830-8751  
Email: CommodityContracts@Calpine.com | Phone: (213) 269-5870  
Email: tbardacke@cleanpoweralliance.org |
| With a copy to:  
Geysers Power Company, LLC  
10350 Socrates Mine Road  
Middletown, CA 95461  
Attn: Vice President, Regional Operations, Geyser Management | With a copy to:  
Geysers Power Company, LLC  
3003 Oak Road, Suite 400  
Walnut Creek, CA 94597  
Attn: Vice President, Origination |
| With a copy to:  
Geysers Power Company, LLC  
717 Texas Avenue, Suite 11.043C  
Houston, TX 77002  
Attn: Chief Legal Officer |  |
| **Reference Numbers:** | **Reference Numbers:** |
| Duns: 127329212  
Federal Tax ID Number: 77-0503977 | Duns:  
Federal Tax ID Number: |
| **Invoices:** | **Invoices:** |
| Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749 | Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
E-mail: settlements@cleanpoweralliance.org |
<table>
<thead>
<tr>
<th><strong>[SELLER’S NAME]</strong> GEYSERS POWER COMPANY, LLC a Delaware limited liability company</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
</table>
| **Scheduling:**  
Attn: Scheduling  
Phone: (713) 830-8612  
Facsimile: (713) 830-8722 | **Scheduling:**  
Attn:  
Phone:  
Email: |
| **Confirmations:**  
Attn: Confirmations Department  
Phone: (713) 830-8333  
Facsimile: (713) 830-8868 | **Confirmations:**  
Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
Email: energycontracts@cleanpoweralliance.org |
| **Payments:**  
Attn: Power Accounting  
Phone: (713) 830-2000  
Facsimile: (713) 830-8749 | **Payments:**  
Attn: Vice President, Power Supply  
Phone: (213) 269-5870  
E-mail: settlements@cleanpoweralliance.org |
| **Wire Transfer:**  
BNK: MUFG Union Bank, N.A.  
ABA: 122000496  
ACCT: 671226010 | **Wire Transfer:**  
BNK: River City Bank  
ABA: 121-133-416  
ACCT: XXXXXX8042 |
CONSENT AND AGREEMENT

among

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
a California joint powers authority
(Contracting Party)

and

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company
(Assignor)

and

MUFG UNION BANK, N.A.,
(First Lien Collateral Agent)

Dated as of [___]
This CONSENT AND AGREEMENT, dated as of [______], 20[__] (this “Consent”), is entered into by and among CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (together with its permitted successors and assigns, “Contracting Party”), MUFG UNION BANK, N.A., in its capacity as collateral agent for the First Lien Secured Parties referred to below (together with its successors, designees and assigns in such capacity, “First Lien Collateral Agent”), and GEYSERS POWER COMPANY, LLC, a limited liability company formed and existing under the laws of the State of Delaware (together with its permitted successors and assigns, “Assignor”).

RECAPITULATIONS

A. Assignor owns the following geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties) (collectively, the “Projects”):

1. The Aidlin project, an approximately 18 megawatt geothermal facility located in Sonoma County, CA.
2. The Sonoma project, an approximately 53 megawatt geothermal facility located in Sonoma County, CA.
3. The two-unit McCabe project, an approximately 84 megawatt geothermal facility located in Sonoma County, CA.
4. The two-unit Ridge Line project, an approximately 76 megawatt geothermal facility located in Sonoma County, CA.
5. The Eagle Rock project, an approximately 68 megawatt geothermal facility located in Sonoma County, CA.
6. The Cobb Creek project, an approximately 51 megawatt geothermal facility located in Sonoma County, CA.
7. The Big Geysers project, an approximately 61 megawatt geothermal facility located in Lake County, CA.
8. The Sulphur Springs project, an approximately 47 megawatt geothermal facility located in Sonoma County, CA.
9. The Quicksilver project, an approximately 53 megawatt geothermal facility located in Lake County, CA.
10. The Lake View project, an approximately 54 megawatt geothermal facility located in Sonoma County, CA.
11. The Socrates project, an approximately 50 megawatt geothermal facility located in Sonoma County, CA.
12. The two-unit Calistoga project, an approximately 69 megawatt geothermal facility located in Lake County, CA.
The Grant project, an approximately 41 megawatt geothermal facility located in Sonoma County, CA.

B. In order to finance the operation and maintenance of the Projects, Assignor has entered into that certain Credit Agreement, dated as of June 9, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), with GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings (“Holdings”), GEYSERS COMPANY, LLC, a Delaware limited liability company (“Geysers Company”), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company (“Wild Horse”) and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company (“Calistoga,” and, together with Holdings, Geysers Company and Wild Horse, each a “Guarantor” and together, the “Guarantors”), MUFG BANK, LTD., as administrative agent for the Lenders, MUFG UNION BANK, N.A., as collateral agent for the First Lien Secured Parties, and the financial institutions from time to time parties thereto in such other capacities as described therein (collectively, the “Lenders”).

C. Contracting Party and Assignor have entered into that certain [Insert description of relevant Major Project Contract(s)], dated as of [__________] [____], [___________] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

D. As security for Assignor’s obligations under the Credit Agreement and related financing documents with respect to the Loans and related obligations, Assignor has granted, pursuant to a security agreement executed by Assignor and First Lien Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, a first priority lien on all of Assignor’s right, title and interest in the Projects and other rights and interests relating thereto, whenever arising, including, without limitation, the Assigned Agreement and all of Assignor’s right, title and interest under (but not any of Assignor’s obligations, liabilities or duties with respect thereto) the Assigned Agreement;

AGREEMENT

NOW, THEREFORE, 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, notwithstanding anything in the Assigned Agreement to the contrary, as follows:

1. Assignment and Agreement.

1.1 Consent to Assignment. Contracting Party (a) is hereby notified and acknowledges that the Lenders have entered into the Credit Agreement and made the extensions of credit contemplated thereby in reliance upon the execution and delivery by Contracting Party of the Assigned Agreement and this Consent, (b) consents to the collateral assignment under the Security Agreement of all of Assignor’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Assignor’s rights to receive payment and all payments due and to become due to Assignor under or with respect to the Assigned Agreement (collectively, the “Assigned Interests”) and (c) acknowledges the right of First Lien Collateral
Agent or a Subsequent Owner (as defined below), upon written notice to Contracting Party (“Step-in Notice”), to make all demands, give all notices, take all actions and exercise all rights of Assignor under the Assigned Agreement. Assignor agrees that (a) Contracting Party may rely, without investigation, on the Step-in Notice being fully authorized and consented to by Assignor with respect to all matters set forth therein, and (b) upon Contracting Party’s receipt of such Step-In Notice, Contracting Party shall deal exclusively with of First Lien Collateral Agent with respect to all matters set forth therein.

1.2 Subsequent Owner. Contracting Party agrees that, if First Lien Collateral Agent notifies Contracting Party in writing that, pursuant to the Security Agreement, it has assigned, foreclosed or sold the Assigned Interests or any portion thereof, then (i) First Lien Collateral Agent or, subject to Section 14.3 of the Assigned Agreement, its successor, assignee designee, or any purchaser of the Assigned Interests (a “Subsequent Owner”) shall be substituted for Assignor under the Assigned Agreement and (ii) Contracting Party shall (1) recognize First Lien Collateral Agent or the Subsequent Owner, as the case may be, as its counterparty under the Assigned Agreement and (2) continue to perform its obligations under the Assigned Agreement in favor of First Lien Collateral Agent or the Subsequent Owner, as the case may be; provided that First Lien Collateral Agent or such Subsequent Owner, as the case may be, has assumed in writing all of Assignor’s rights and obligations (including, without limitation, the obligation to cure any then-existing payment and performance defaults, but excluding any obligation to cure any then-existing defaults which by their nature are incapable of being cured) under the Assigned Agreement.

1.3 Right to Cure. If Assignor defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend its performance under the Assigned Agreement (each hereinafter a “default”), Contracting Party shall not terminate or suspend its performance under the Assigned Agreement until it first gives written notice of such default to First Lien Collateral Agent and affords First Lien Collateral Agent a period of at least 30 days (or if such default is a nonmonetary default, such longer period (not to exceed 60 days) as may be required so long as First Lien Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (a) if possession of the Projects is necessary to cure such nonmonetary default and First Lien Collateral Agent has commenced foreclosure proceedings, First Lien Collateral Agent shall be allowed a reasonable time to complete such proceedings, and (b) if First Lien Collateral Agent is prohibited from curing any such nonmonetary 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 Assignor, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

1.4 No Amendments.

(a) Except to the extent Assignor is permitted under the Credit Agreement to enter into amendments of the Assigned Agreement, as to which First Lien Collateral Agent agrees Contracting Party may rely solely on Assignor’s representation without investigation, Contracting Party agrees that it shall not, without the prior written consent of First
Lien Collateral Agent, enter into any novation, material amendment or other material modification of the Assigned Agreement.

(b) Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, (i) sell, assign or otherwise transfer any of its rights under the Assigned Agreement (except as contemplated pursuant to Section 14.4 of the Assigned Agreement), (ii) terminate, cancel or suspend its performance under the Assigned Agreement (unless it has given First Lien Collateral Agent notice and an opportunity to cure in accordance with Section 1.3 hereof), (iii) consent to any assignment or other transfer by Assignor of its rights under the Assigned Agreement, or (iv) consent to any voluntary termination, cancellation or suspension of performance by Assignor under the Assigned Agreement.

1.5 Replacement Agreements. In the event the Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Assignor, Contracting Party shall, at the option of First Lien Collateral Agent exercised within 45 days after such rejection or termination, enter into a new agreement with First Lien Collateral Agent having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, and (ii) upon execution of such new agreement, First Lien Collateral Agent cures any outstanding payment and performance defaults under the Assigned Agreement, excluding any performance defaults which by their nature are incapable of being cured.

1.6 Limitations on Liability. Contracting Party acknowledges and agrees that First Lien Collateral Agent shall not have any liability or obligation to Contracting Party under the Assigned Agreement as a result of this Consent or otherwise, nor shall First Lien Collateral Agent be obligated or required to (a) perform any of Assignor’s obligations under the Assigned Agreement, except during any period in which First Lien Collateral Agent has assumed Assignor’s rights and obligations under the Assigned Agreement pursuant to Section 1.2 above, or (b) take any action to collect or enforce any claim for payment assigned under the Security Agreement. If First Lien Collateral Agent has assumed Assignor’s rights and obligations under the Assigned Agreement pursuant to Section 1.2 above or has entered into a new agreement pursuant to Section 1.5 above, First Lien Collateral Agent’s liability to Contracting Party under the Assigned Agreement or such new agreement, and the sole recourse of Contracting Party in seeking enforcement of the obligations under such agreements, shall be limited to the interest of First Lien Collateral Agent in the Project.

1.7 Delivery of Notices. Contracting Party shall deliver to First Lien Collateral Agent, concurrently with the delivery thereof to Assignor, a copy of each notice, request or demand given by Contracting Party to Assignor pursuant to the Assigned Agreement relating to (a) a default by Assignor under the Assigned Agreement, and (b) any matter that would require the consent of First Lien Collateral Agent pursuant to Section 1.4 above.

1.8 Transfer. First Lien Collateral Agent shall have the right to assign all of its interest in the Assigned Agreement or a new agreement entered into pursuant to the terms of this Consent and Section 14.3 of the Assigned Agreement; provided that such transferee assumes in
writing the obligations of Assignor or First Lien Collateral Agent, as applicable, under the Assigned Agreement or such new agreement. Upon such assignment, First Lien Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

1.9 Refinancing. [Contracting Party hereby acknowledges that Assignor may, from time to time during the term of the Assigned Agreement, refinance the indebtedness incurred under the Credit Agreement pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing. In connection with any such refinancing, Contracting Party hereby consents to any collateral assignment or other assignment of the Assigned Agreement in connection therewith and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, Contracting Party agrees that (i)(1) references in this Consent to the “First Lien Collateral Agent” and the “First Lien Secured Parties” shall be deemed to be references to the applicable financing parties providing such refinancing, and (2) references in this Consent to the “Credit Agreement” and the “Security Agreement” shall be deemed to be references to the corresponding agreements entered into in connection with such refinancing, and (ii) if requested by Assignor, it shall enter into a new consent, substantially in the form of this Consent, in favor of the parties providing such refinancing.]

2. Payments under the Assigned Agreement.

2.1 Payments. Contracting Party shall pay all amounts (if any) payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person, entity or account as shall be specified from time to time by First Lien Collateral Agent to Contracting Party in writing. Notwithstanding the foregoing, if any entity or person has become a Subsequent Owner pursuant to the terms hereof, then Contracting Party shall pay all such amounts directly to such Subsequent Owner or an account designated by Subsequent Owner.

2.2 No Offset, Etc. All payments required to be made by Contracting Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those allowed by the terms of the Assigned Agreement.

3. Representations and Warranties of Contracting Party. Contracting Party hereby represents and warrants, in favor of First Lien Collateral Agent, as of the date hereof, that:

(a) Contracting Party (i) 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, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby.

10 This Section 1.9 to be included at Borrowers election and with such changes as Borrower may reasonably request.
and thereby;

(b) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of Contracting Party and do not require any approvals, filings with, or consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate officers of Contracting Party, and constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors’ rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(d) there is no litigation, action, suit, proceeding or investigation pending or (to Contracting Party’s actual knowledge) threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Contracting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Contracting Party, or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereeto or any of the transactions contemplated hereby or thereby;

(e) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, other than any such violation, breach or default which could not reasonably be expected to have a material adverse effect on Contracting Party’s ability to perform its obligations under the Assigned Agreement;

(f) neither Contracting Party nor, to Contracting Party’s actual knowledge without investigation, any other party to the Assigned Agreement, is in default of any of its obligations thereunder;

(g) to Contracting Party’s actual knowledge, and without investigation with respect to matters pertaining to Assignor, (i) no event of force majeure exists under, and as defined in, the Assigned Agreement, and (ii) 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 Contracting Party or Assignor to terminate or suspend its obligations under the Assigned Agreement; and

(h) the Assigned Agreement and this Consent are the only agreements between Assignor and Contracting Party with respect to the Project.
Each of the representations and warranties set forth in this Section 3 shall survive the execution and delivery of this Consent and the Assigned Agreement for a period of one year from the date hereof.

4. **Miscellaneous.**

4.1 **Notices.** Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Assignor:

Geysers Power Company, LLC,
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Contracting Party:

Clean Power Alliance of Southern California
801 S Grand, Suite 400
Los Angeles, CA 90017
Telephone: (213) 269-5870
Attention: Executive Director
Email: tbardacke@cleanpoweralliance.org

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by prepaid telegram or by facsimile or (e) if sent by other electronic means (including electronic mail) confirmed by any means in which a notice or other communications may be provided hereunder (including electronic mail). Any party may change its address for notice hereunder by giving of 30 days’ notice to the other parties in the manner set forth hereinabove.
4.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) 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, Contracting 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. Contracting Party 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 Contracting Party at its notice address provided pursuant to Section 4.1 hereof. Contracting 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.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Consent by facsimile or “pdf” transmission shall be as effective as delivery of a manually signed original.

4.4 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.

4.5 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.

4.6 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Contracting Party and First Lien Collateral Agent.

4.7 Successors and Assigns. This Consent shall bind and benefit Contracting Party, First Lien Collateral Agent, and their respective successors and assigns.

4.8 Third Party Beneficiaries. Contracting Party and First Lien Collateral Agent hereby acknowledge and agree that the First Lien Secured Parties are intended third party beneficiaries of this Consent.
4.9 WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTING PARTY, ASSIGNOR AND COLLATERAL AGENT 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.

4.10 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 between the parties hereto in respect of 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 (including, without limitation, the Assigned Agreement), the terms, conditions and provisions of this Consent shall prevail.

4.11 Termination of Consent. This Consent shall terminate upon the earliest to occur of (a) the termination or cancellation of the Assigned Agreement in accordance with its terms and in accordance with the terms of this Consent (it being understood that this Consent shall not terminate but shall remain in effect in the circumstances described in Section 1.5 above in respect of any new agreement entered into in accordance with such Section), (b) the expiration of the term of the Assigned Agreement and (c) the termination of the Security Agreement in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company,
as Assignor

By: __________________________
    Name: ______________________
    Title: _______________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
A California joint powers authority,
as Contracting Party

By: __________________________
    Name: ______________________
    Title: _______________________

Accepted and Agreed to:

MUFG UNION BANK, N.A.,
solely in its capacity as First Lien Collateral Agent

By: __________________________
    Name: ______________________
    Title: _______________________

By: __________________________
    Name: ______________________
    Title: _______________________

Exhibit HO - 11
PAYMENT INSTRUCTIONS

Pay to: MUFG Union Bank, N.A.
ABA Number: 122000496
Account Number: 6712260101
Account Name: Geysers Power Co. – Revenue Acct.
Attention: Corporate Trust
Reference: Corp Trust Admin – San Francisco
EXHIBIT P

CPM Adjustment Factors

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EXHIBIT Q

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.
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.
EXHIBIT S
[RESERVED]
EXHIBIT T

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

____________________________________________________________________________________

Seller: [Name] Project: [Name]
Current Guaranteed Drilling Start Date: [Date]
New Guaranteed Drilling Start Date (if Seller’s claims are validated in full): [Date]
Guaranteed Commercial Operation Date: [Date]
New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
RECOMMENDATION
Approve two (2) Renewable Power Purchase Agreements (PPAs) with Pivot Energy and one amendment to the PPA with Radiant BMT, LLC (Radiant) for local resources to serve the Power Share program and authorize the Chief Executive Officer to execute the agreements.

BACKGROUND
Power Share Program
CPA’s Power Share program promotes the development of renewable generation in and for underserved communities. The Power Share program umbrella houses two CPUC-approved programs: the Disadvantaged Community Green Tariff (DAC-GT) program and the Community Solar Green Tariff (CS-GT) program. Both the DAC-GT and CS-GT programs provide enrolled customers with 100% renewable energy and a 20% bill discount. Under the DAC-GT program, enrolled customers receive 100% renewable energy from a project located within a DAC in Southern California Edison territory. Under the CS-GT program, enrolled customers receive a portion of the renewable energy output from a community solar project located within a DAC within 5 miles of the customers’ census tract. Above market procurement costs associated with Power Share resources are reimbursed to CPA by the CPUC. CPA must implement the Power Share programs
consistent with CPUC guidelines and Power Share PPAs must be approved by the CPUC after approval by the CPA Board.

Below is a table showing CPA’s total program allocation, currently executed PPA capacity, and the remaining capacity CPA will need to procure to fully supply the program allocation:

<table>
<thead>
<tr>
<th>CPA Program Allocation (MW)</th>
<th>Executed PPA Capacity (MW)</th>
<th>Remaining Capacity (MW)</th>
<th>Remaining Capacity (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAC-GT</td>
<td>12.19</td>
<td>8.92 ¹</td>
<td>3.27</td>
</tr>
<tr>
<td>CS-GT</td>
<td>3.37</td>
<td>0</td>
<td>3.37</td>
</tr>
</tbody>
</table>

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

In December 2021, 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.

CPA received eight responses to the 2021 RFO from three unique developers, comprised of six DAC-GT offers 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 two Pivot projects were among the shortlisted projects from the 2021 Power Share solicitation.

¹ Includes the executed 3 MW Radiant project
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.

**Pivot Energy Project Overview**

The Beverly and San Gabriel projects are rooftop solar projects located across the street from each other in a Disadvantaged Community in Pico Rivera. Both projects have commercial operation dates of 12/31/2023.

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Location</th>
<th>Capacity (MW)</th>
<th>Online Date</th>
<th>Term (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beverly</td>
<td>Rooftop Solar</td>
<td>Pico Rivera</td>
<td>0.40</td>
<td>12/31/2023</td>
<td>15</td>
</tr>
<tr>
<td>San Gabriel</td>
<td>Rooftop Solar</td>
<td>Pico Rivera</td>
<td>0.27</td>
<td>12/31/2023</td>
<td>15</td>
</tr>
</tbody>
</table>

Both projects have passed Fast Track Interconnection screens. Site control has been secured for all projects, which are located on the rooftops of Extra Space Storage 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.

A detailed overview of the projects and evaluation criteria are described in Exhibit A.

**Radiant Project Amendment Overview**

On September 2, 2021, the Board approved a PPA for the Radiant project, a 3 MW solar facility to supply Power Share customers, which was procured in the 2020 Power Share RFO. The project was scheduled to come online in 2023. The Radiant project has experienced distress due to industry-wide challenges that have strained energy developer’s ability to deliver projects on-time and at cost, including disruptions to the supply chain and rising financing costs. In August 2022, the developers of Radiant have requested a price adjustment and delay to the online date of the project in order to keep moving forward with development. CPA did not include Radiant in the recently-concluded
Price Refresh Process because any change to contract terms would require approval by the CPUC and it is uncertain whether the CPUC would consider such requests. Recently, however, the CPUC has granted price increase requests for PG&E projects, potentially indicating openness to such amendments.

The amendment the Board is asked to approve today would be contingent on the CPUC approving the price increase, including the CPUC’s reimbursement for all above market costs.

**Rationale**

**Pivot**
The Pivot projects are being procured under the CPUC Community Solar Green Tariff (CS-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 Pivot projects comply with project eligibility requirements of the CS-GT program and would serve about 340 Power Share customers. CPA currently has approximately 6,200 customers enrolled in the Power Share program.

Should the Board approve execution of these PPAs, CPA is required to submit the PPAs for subsequent approval to the CPUC.

**Radiant**
The Radiant PPA amendment will enable the Radiant project to come online and provide renewable energy to DAC-GT customers. CPA’s DAC-GT program is fully enrolled, therefore keeping the Radiant project capacity in CPA’s portfolio will allow CPA to serve more Power Share customers with long-term contracted resources and reduce its reliance
on short term renewable energy purchases for the Power Share program. The CPUC will reimburse CPA for additional procurement costs associated with the price increase, provided that the amendment to the PPA is approved by the CPUC. If the CPUC does not approve the amendment, the original contract terms remain in effect.

**ATTACHMENTS**

1. Power Share PPA Presentation
2. Renewable Power Purchase Agreement with Pivot Energy - Pivot Energy PPA 27 LLC
4. Amendment to Renewable Power Purchase Agreement with Radiant BMT, LLC

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2 Consistent with industry practice, portions of the agreements have been redacted to protect market sensitive information.
EXHIBIT A: PIVOT ENERGY DESCRIPTION OF PROJECTS

Developer
Pivot Energy was founded in 2009 and is headquartered in Denver, Colorado. Pivot’s expertise is in community solar, with 261 MW of community solar installed to-date across 27 states. Pivot Energy is also a member of the Bassett-Avocado Heights Advanced Energy Community (BAAEC) partnership along with The Energy Coalition (TEC) and other stakeholders. The BAAEC project seeks to demonstrate how disadvantaged communities can be a part of a decentralized, clean and affordable clean energy future.

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 Pivot 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 found to be 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 Medium. Site control of the rooftop space for the projects is secured. The projects do not require environmental permitting. Interconnection will be completed via the Fast-Track process and will require minor upgrades to distribution equipment.
**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 two projects will create 20 new direct construction jobs and 2 permanent jobs.

**Environmental Stewardship**
The projects rank High as they will be constructed in the built environment on industrial properties and therefore are 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.

**Environmental Review**
The Pivot Energy projects do not require Conditional Use Permits and are exempt from CEQA review. The developer is responsible for securing building and electrical permits which will be required for this project. CPA has no role, jurisdiction, or authority whatsoever with respect to permit review or project approval.
Item 11 - Power Share PPAs
December 1, 2022
Executive Summary

- Under two CPUC approved programs (DAC-GT and CS-GT), CPA may procure energy from small-scale renewable projects within Disadvantaged Communities (DACs) in order to provide 100% renewable energy to customers at a 20% bill discount.

- CPA intends to fill its program cap of 12.19 MW for its DAC-GT program and 3.37 MW for its CS-GT program over multiple RFOs.

- In December 2020, CPA launched its first Power Share RFO.
  - In September 2021, the Board approved a PPA for the Radiant project, a 3 MW solar facility to supply DAC-GT program customers.
  - Recently, Radiant requested a price adjustment and a delay to the online date (COD) as necessary to move forward with development.

- In December 2021, CPA launched its second Power Share RFO.
  - In July 2022, the Energy Committee approved shortlisting two CS-GT projects from developer Pivot Energy.

- **Action Requested:** Approve two (2) Renewable Power Purchase Agreements (PPAs) with Pivot Energy and one (1) amendment to the PPA with Radiant BMT, LLC (Radiant).

1. Disadvantaged Community Green Tariff (DAC-GT) and Community Solar Green Tariff (CS-GT).
2. DACs are defined as communities that are identified in the CalEnviroScreen 3.0 as among the top 25 percent of census tracts statewide, plus the census tracts in the highest five percent of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.
Agenda

- Power Share Background
- Community Solar PPAs
- Radiant PPA Amendment
- Action Requested
Power Share
Background
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 (community solar) programs

CPA was allocated a total of 12.19 MW for its DAC-GT program and 3.37 MW for its community solar 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
Community Solar Pivot PPAs
RFO Overview

The 2021 Power Share RFO was released in December 2021 to fulfill its outstanding DAC-GT and community solar program capacity, with offers due on June 1, 2022.

On July 27, 2022, the Energy Committee approved shortlisting seven (7) projects from this RFO, including five DAC-GT and two community solar projects.

- The Board approved five (5) DAC-GT PPAs arising from the 2021 Power Share RFO at its October Board Meeting.

If approved today, the two community solar PPAs will be submitted to the CPUC for approval and once approved, will be eligible for above-market cost reimbursement.

CPA is planning to launch a third Power Share RFO to secure additional supply in December 2022.
Pivot Projects

Project Overview
- The 0.27 MW San Gabriel project is located at 9612 Beverly Blvd, Pico Rivera, CA
- The 0.40 MW Beverly project is located at 4344 San Gabriel River Parkway, Pico Rivera, CA
- Both projects are within 5 miles of DACs within CPA’s service territory
- The developer is Pivot Energy, whose expertise is in community solar, with 261 MW installed to-date across 27 states

Rationale
- The Pivot projects will make progress towards filling capacity under CPA’s CS-GT program cap
- The Pivot projects are priced under the CPUC-designated price cap
  - The CPUC funds any above-market costs that CPA incurs for the procured power
These projects will make progress towards filling CPA’s community solar program allocation.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Capacity (MW)</th>
<th>Online Date</th>
<th>Location</th>
<th>Environmental Stewardship</th>
<th>Benefits to DACs</th>
<th>Workforce Development</th>
<th>Project Location</th>
<th>Development Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Gabriel</td>
<td>0.27</td>
<td>12/31/2023</td>
<td>Pico Rivera</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>Medium</td>
</tr>
<tr>
<td>Beverly</td>
<td>0.40</td>
<td>12/31/2023</td>
<td>Pico Rivera</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>High</td>
<td>Medium</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CPA's Community Solar Allocation (MW)</th>
<th>2020 DAC RFO Procurement (MW)</th>
<th>CPA's Remaining Allocation (MW)</th>
<th>CPA's Remaining Allocation after Recommendation (MW)</th>
<th>CPA's Remaining Allocation after Recommendation (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.37</td>
<td>0</td>
<td>3.37</td>
<td>2.7</td>
<td>80%</td>
</tr>
</tbody>
</table>
Radiant PPA Amendment
Radiant PPA

- The Radiant project is a 3 MW solar project located in San Bernardino County.
- The project was procured in the 2020 DAC RFO and approved by the Board on September 2, 2021 to contribute to CPA’s DAC-GT program allocation.
- The CPUC approved the Radiant PPA on November 29, 2021.
- The Radiant project has experienced distress due to industry-wide challenges that have strained energy developer’s ability to deliver projects on-time and at cost, including disruptions to the supply chain and rising financing costs.
- In August 2022, the developer of the project, Radiant BMT, requested a price increase and an extension of the online date from 12/31/2023 to 12/31/2024.
- The Radiant project was not included in the recent PPA Price Refresh Process because any change to contract terms would require approval by the CPUC, and it is uncertain whether the CPUC would approve such requests.
- The price increase request represents a material increase to CPA’s original PPA.
- The project is likely to achieve its revised online date due to a brief construction timeline and existing interconnection agreement.
CPUC Approval

- An amendment to the Radiant PPA will also require CPUC approval.
- CPA will request the CPUC reimburse the full above-market procurement cost of the amended Radiant PPA, including costs associated with the proposed price increase.
- Recently the CPUC granted price increase requests from PG&E for its projects due to extenuating market conditions, indicating potential openness to such amendments.
- If the PPA amendment is not approved by the CPUC, the existing PPA terms with Radiant will be in effect.
Action
Requested
**Action Requested**

Approve the two Pivot Energy long-term renewable PPAs and the Radiant PPA Amendment and Authorize the CEO to execute the three (3) Agreements

<table>
<thead>
<tr>
<th>CPUC Program</th>
<th>Developer</th>
<th>Project Name</th>
<th>Capacity (MW)</th>
<th>Technology</th>
<th>Online Date</th>
<th>Term (years)</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>CS-GT</td>
<td>Pivot Energy</td>
<td>San Gabriel</td>
<td>.27</td>
<td>Solar PV - Rooftop</td>
<td>12/31/2023</td>
<td>15</td>
<td>Pico Rivera</td>
</tr>
<tr>
<td>CS-GT</td>
<td>Pivot Energy</td>
<td>Beverly</td>
<td>.40</td>
<td>Solar PV - Rooftop</td>
<td>12/31/2023</td>
<td>15</td>
<td>Pico Rivera</td>
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<tr>
<td>DAC-GT</td>
<td>Radiant</td>
<td>Minneola</td>
<td>3.0</td>
<td>Solar PV – Ground Mount</td>
<td>12/31/2024</td>
<td>15</td>
<td>Newberry Springs</td>
</tr>
</tbody>
</table>
# RENEWABLE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller:** Pivot Energy PPA 27 LLC, a Colorado limited liability company.

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

**Description of Facility:** A 0.400 MW photovoltaic generating facility located on the roof of Extra Space Storage at 9612 Beverly Boulevard, Pico Rivera, CA 90660

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>September 3, 2021</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>N/A</td>
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<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>June 14, 2022</td>
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<tr>
<td>Executed Interconnection Agreement</td>
<td>December 31, 2022</td>
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<tr>
<td>Financial Close</td>
<td></td>
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<tr>
<td>Expected Construction Start Date</td>
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<tr>
<td>Initial Synchronization</td>
<td>December 7, 2023</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>December 7, 2023</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>December 11, 2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>December 21, 2023</td>
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</table>

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

**Delivery Term Expected Energy:**

`REDACTED`
<table>
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<th>Expected Energy (MWh)</th>
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<tr>
<td>1</td>
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<td>14</td>
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<tr>
<td>15</td>
<td></td>
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</tbody>
</table>

**Guaranteed Capacity:** 0.400 MW of total Facility capacity

**Guaranteed Construction Start Date:** September 30, 2023

**Guaranteed Commercial Operation Date:** December 31, 2023

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

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

**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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<th>ARTICLE</th>
<th>TITLE</th>
<th>PAGE</th>
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<td>California Renewables Portfolio Standard</td>
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<td>Reduction in Delivery Obligation</td>
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### Exhibits:

- Exhibit A  Facility Description
- Exhibit B  Facility Construction and Commercial Operation
- Exhibit C  [Reserved]
- Exhibit D  Scheduling Coordinator Responsibilities
- Exhibit E  Progress Reporting Form
- Exhibit F-1 Form of Annual Expected Available Facility Capacity Report
- Exhibit F-2 Form of Monthly Expected Facility Energy Report
- Exhibit G  Guaranteed Energy Production Damages Calculation
- Exhibit H  Form of Commercial Operation Date Certificate
- Exhibit I  Form of Installed Capacity Certificate
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- Exhibit K  Form of Letter of Credit
- Exhibit L  Form of Buyer Assignment Agreement
- Exhibit M  [Reserved]
- Exhibit N  Notices
- Exhibit O  Form of Consent to Collateral Assignment
- Exhibit P  Material Permits
- Exhibit Q  [Reserved]
- Exhibit R  Metering Diagram
- Exhibit S  Supply Chain Code of Conduct
RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of ___________ (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties”. All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.14(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 4.4(d).
“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismised 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 MWhs 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 4.8(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Resource ID” has the same meaning as “Resource ID” 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).

“Community Sponsor” means a local non-profit community-based organization or local government entity that is located in Buyer’s service territory and sponsors the Facility on behalf of the residents of the community.

“Compliance Actions” has the meaning set forth in Section 3.14(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.14.
“Concurrence Letter” means authorization from the Utility Distribution Company that the Facility may participate in Buyer’s Distributed Energy Resource Aggregation (as such term is defined in the CAISO Tariff).

“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; provided, if, prior to the Commercial Operation Date, there is a change in applicable Laws that increases the ITC rate applicable to the Facility, Seller shall provide Notice to Buyer of the effective date of such Law and the Contract Price shall be reduced by $ per MWh for each percentage point that the new ITC rate is above $.

“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 MWs curtailed corresponding to the MWs 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 4.4(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 4.8(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (i) cash, or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Disadvantaged Communities” or “DAC” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 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 Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“Energy Replacement Damages” has the meaning set forth in Section 4.7.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Section 3.3(b).

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

“Facility Energy” means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“Facility Meter” means the CAISO approved 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 4.4(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 4.8(a).

“Future Environmental Attributes” shall mean any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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 4.7.

“Imbalance Energy” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.
“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection 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 0.420 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“Joint Powers 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.

“kW” means kilowatt measured in alternating current, unless expressly stated in terms of direct current.

“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 development, 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, maintenance, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Renewable Energy Incentives. If Seller is the Non-Defaulting Party, the value of any Renewable Energy Incentives and Tax Credits, determined on an after-tax basis, lost due to Buyer’s Event of Default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives and Tax Credits, if any, shall be included in the calculation of “Losses” which Seller may recover.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Low-Income Community Bonus**” has the meaning set forth in H.R. 5376 Section 13103.

“**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 SQMD Charge” has the meaning set forth in Section 4.1.

“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 4.6(a).

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning on the Cover Sheet.

“Production Tax Credit” or “PTC” means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

“Progress Report” means a progress report including the items set forth in Exhibit E.
“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to distribution-interconnected rooftop solar generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Real-Time Forecast” has the meaning set forth in Section 4.4(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“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.

“Second Agreement” means that Renewable Power Purchase Agreement by and between Clean Power Alliance of Southern California, a California joint powers authority, as Buyer and Pivot Energy PPA 28 LLC, as Seller, dated as of [________], as such agreement may be amended or modified.

“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 Pre-COD Liability Cap” has the meaning set forth in Section 11.9.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary
to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, 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.

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“SQMD Reporting” has the meaning set forth in Section 4.1.

“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 Pivot Energy Development LLC, a Colorado limited liability company.

“Utility Distribution Company” means any entity that owns, operates and maintains distribution lines and associated facilities and/or has entitlements to use certain distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions ("Contract Term"); provided, subject to Buyer’s obligations in Section 3.7, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval ("Approval Application"). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Meter Service Agreement between Seller and CAISO and a Concurrence Letter from the Utility Distribution Company shall have been executed and delivered and be in full
force and effect, and a copy of each such agreement delivered to Buyer, and the Installed Capacity under this Agreement and the Second Agreement total at least 500 kW;

(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 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.

2.5 Low-Income Community Bonus. Seller shall make commercially reasonable efforts to qualify for and receive the Low-Income Community Bonus. Seller shall give Notice to Buyer within five (5) Business Days of Seller’s receipt of notice from any Governmental Authority regarding the outcome of Seller’s request or application to receive such Low-Income Community Bonus. Buyer shall use commercially reasonable efforts to provide information reasonably requested by Seller in support of Seller’s obligations pursuant to this Section 2.5.

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 thereafter 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, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.12 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

3.13 **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 3.12, 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 ($25) per kW 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 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 Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D. In consideration of Buyer’s performance of its obligation to submit Settlement Quality Meter Data for the Facility to CAISO in accordance with Exhibit D (“SQMD Reporting”), Seller shall pay or cause to be paid to Buyer for each month for which Buyer provides SQMD Reporting for the Facility an amount equal to Seller’s share of Buyer’s cost of providing such service, which amount shall be equal to Five Hundred Dollars ($500) per CAISO

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Resource ID for which Buyer submits Settlement Quality Meter Data ("Monthly SQM Charge"). If the Parties mutually agree in their sole discretion to allow a third party selected by Seller to submit such Settlement Quality Meter Data to CAISO, then as of the later of (i) the date Seller provides Notice of such election to Buyer, and (ii) the effective date that any such change is approved by the CAISO (to the extent required), Buyer shall no longer provide any such SQMD Reporting and the Monthly SQMD Charge will terminate.

(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. For avoidance of doubt, provision of new or different Energy related products that results in a reduction to the Energy output of the Facility shall be deemed a material adverse effect on Seller’s obligations or liabilities under this Agreement.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 [Reserved].

4.4 **Forecasting.** Seller shall provide the 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 an amount equivalent to at least the Installed Capacity (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 an amount equivalent to at least the Installed Capacity 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, and 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 4.4(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 Distributed Energy Resource Aggregations under the CAISO Tariff, including complying with CAISO dispatch and operating instructions and providing appropriate operational data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO in providing all data, information, and authorizations required thereunder.

4.5 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order 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 reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.**

(i) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i).

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). “**Guaranteed Energy Production**” means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer 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 SP15 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.

4.8 **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 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.
(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("Deficient Month") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified
by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.
6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided, such agreements 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. All Facility Meters will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller’s sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of the CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Seller shall separately meter all Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Buyer or its designated Scheduling Coordinator shall act as the Scheduling Coordinator Metered Entity for the Facility. Seller shall take commercially reasonable actions to assist Buyer or its designated SC in satisfying the requirements of the CAISO Tariff in connection with its role as the Scheduling Coordinator Metered Entity. Metering will be reasonably consistent with the Metering Diagram set forth as Exhibit R. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) application and or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate
by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 Invoicing. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the calculation of Deemed Delivered Energy, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices. The invoice for each month for which Buyer provides SQMD Reporting shall include a credit in the amount of the Monthly SQMD Charge owed by Seller to Buyer for such month.

8.2 Payment. Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with
California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment pursuant to Section 7.2. 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; provided, Seller has no obligation to replenish the Development Security after any draw or collection by Buyer to an amount in excess of the Seller Pre-COD Liability Cap. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall
return the Development Security to Seller, plus any accrued interest, if any, if Development Security was posted as cash, less the amounts drawn in accordance with this Agreement. Seller may at its option exchange one permitted form of Development Security for another permitted form of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security plus accrued interest, if any, if such Performance Security is posted as cash. Seller may at its option exchange one permitted form of Performance Security for another permitted form of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller within one hundred eighty (180) days following the end of each fiscal year and upon Seller’s request annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

**ARTICLE 9**
**NOTICES**

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

**ARTICLE 10**
**FORCE MAJEURE**

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the
reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the
cessation or termination of such Force Majeure Event, all as known or estimated in good faith by
the affected Party; provided, a Party’s failure to give timely Notice shall not affect such Party’s
ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice
materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period
(other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one
hundred eighty (180) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that
such delays did not result from Seller’s actions or failure to take commercially reasonable actions,
then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination,
neither Party shall have any liability to the other Party, save and except for those obligations
specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security
then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation
Date that has caused either Party to be wholly or partially unable to perform its obligations
hereunder in any material respect, and the impacted Party has claimed and received relief from
performance of its obligations for a consecutive twelve (12) month period, then the non-claiming
Party may terminate this Agreement upon Notice to the other Party. Upon any such termination,
neither Party shall have any liability to the other Party, save and except for those obligations
specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security
then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11**

**DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event
of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required
pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after
Notice thereof;

(ii) any representation or warranty made by such Party herein is false or
misleading in any material respect when made or when deemed made or repeated, and such default
is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not
to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default
within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or
obligation set forth in this Agreement (except to the extent constituting a separate Event of Default
set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production
that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set
forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof
(or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable;

(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; or

(vii) such Party defaults under the Second Agreement, and after expiration of applicable notice and cure period under such Second Agreement, if any, the non-defaulting party under the Second Agreement terminates such Second Agreement.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(vi) if the officer’s certificate provided pursuant to Section 2.2(i) specifies that Seller will utilize PTC for financing the Facility.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that
terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; **provided**, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall, subject to the Seller Beentis amount 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. If the Development Security amounts drawn by Buyer plus other amounts incurred by Seller prior to such termination exceed the , then Buyer will promptly return such excess amounts to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would
be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or in the event of a termination pursuant to Section 11.3(a)(ii), ninety (90) days), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party
other than Buyer for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR
A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE
DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND
MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE
ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN
THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO
SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF
CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH
OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR
ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR
UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE
REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR
MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE
OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND
ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE
OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE
VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE
to BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER
USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE
RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE
DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE
LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED
IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES
ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN
ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES
CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR
LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED
ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE
CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY
PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR
ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH
PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE
EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE
BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY
WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO
ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.
ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison’s service territory, and (ii) will be located within an eligible DAC within five (5) miles of the DAC census tracts in which subscribing customers of Buyer reside.

(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.

(g) The Facility shall have a Community Sponsor during the Delivery Term.
13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof.

**ARTICLE 14**

**ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith (i) 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"), and (ii) at Seller’s reasonable request, execute and deliver any customary estoppel certificates to this Agreement, or other similar documents in favor of Lender, in form and substance reasonably
satisfactory to Buyer; 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.

14.3 **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), (b) Baa3 from Moody’s and BBB- from S&P, and (c) 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. 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.

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 hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual
property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “IP Indemnity Claim”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars ($1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars ($1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.
(b) **Employer’s Liability Insurance.** At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers’ liability insurance of not less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) **Business Auto Insurance.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** During the construction of the Facility prior to the Commercial Operation Date, Seller shall maintain, or cause to be maintained, at its sole expense construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Subcontractor Insurance.** At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through (f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, such failure shall be a failure to perform a material covenant or obligation set forth in this Agreement and, as such, shall constitute an Event of Default pursuant to Section 11.1(a)(iii) after Notice thereof from Buyer and failure to cure according to
the timeframes set forth therein. 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 except that if any required insurance is no longer commercially available to Seller, then the failure to comply related thereto will not be an Event of Default hereunder and the Parties will meet and confer to discuss a suitable and mutually agreeable replacement or other alternative for such insurance.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated
with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party 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.

PIVOT ENERGY PPA 27 LLC, a Colorado 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: Beverly – Extra Space Storage (ESS)

Site includes all or some of the following APNs: 8122-011-027

City: Pico Rivera

County: Los Angeles

Zip Code: 90660

Latitude and Longitude: 34.006757° -118.071777°

Facility Description: Rooftop 500kWdc / 400kWac Solar Photovoltaic Solar System

Delivery Point: Point of Delivery at new SCE 12kV switch located on riser pole near existing utility pole #4425833E

PNode: To be assigned during CAISO NRI process

Transmission Provider: Southern California Edison

Additional Information: 9612 Beverly Boulevard, Pico Rivera, CA 90660

Exhibit A - 1
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


   a. “Construction Start” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the 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 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 Dollars ($250) for each kW 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 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, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) **CAISO Costs and Revenues.** Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or...
penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(d) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“CAISO Charges Invoice”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) **Master Data File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.

(i) **SQMD Reporting.** If Seller elects to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan(s), Seller shall provide or
cause to be provided to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, Settlement Quality Meter Data no more than six (6) Business Days after the relevant flow date. In connection with any SQMD Plan(s), as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller in the SQMD Plan submission and approval process and perform the obligations required by the SQMD Plan or the CAISO applicable to Scheduling Coordinators with respect to submitting Settlement Quality Meter Data to the CAISO including without limitation submitting required affirmations and attestations (if any). Buyer (as Scheduling Coordinator) shall be responsible for submitting Settlement Quality Meter Data to the CAISO using the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan(s) and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer as a result of Seller’s failure to provide or have provided Settlement Quality Meter Data consistent with the SQMD Plan(s) to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator), with respect to the Facility Meters and/or only the Storage Facility Meters, as applicable, within the timeframe required by this Section (i).
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

ANNUAL EXPECTED AVAILABLE FACILITY ENERGY

[MW Per Hour] – [Insert Month]

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
</tr>
</thead>
</table>

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2
MONTHLY EXPECTED FACILITY ENERGY

[MWh Per Hour] – [Insert Month]

|     | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[(A - B) \times (C - D) - (E + F)\]

where:

- \(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- \(B\) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- \(C\) = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes.
- \(D\) = the Contract Price, in $/MWh
- \(E\) = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period
- \(F\) = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is \((C - D)\)

“**Adjusted Energy Production**” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Replacement Energy**” means 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 J - 1
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: 
Bank Ref.: 
Amount: US$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such
other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]
[Insert officer title]
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date___________________________
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”). 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, 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) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (ii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Financing Party of any Notice (as defined in the PPA) 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; (iv) PPA Buyer will provide copies to Financing Party of annual forecasts of Metered Energy and monthly forecasts of Available Capacity provided by PPA Seller pursuant to Sections 4.4(a) and (b) of the
PPA; (v) PPA Buyer will provide copies to Financing Party of all invoices and supporting data provided by PPA Seller pursuant to Section 8.1, provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Buyer will not be obligated to deliver copies of any communications relating thereto to Financing Party; and (vi) PPA Buyer will provide copies to Financing Party of any other information reasonably requested by Financing Party relating to Assigned Products.

(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.

(f) Financing Party may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of PPA Seller.

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. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the 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

c) The Assignment Period shall automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the PPA, 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.

d) 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 [__] [Buyer’s Representations and Warranties]; Section [__] [Limitation of Liability and Exclusions of Warranties, Article [__] [Confidential Information], Sections [__] [Severability], [__] [Counterparts], [__] [Amendments] and [__] [No Agency, Partnership, Joint Venture or Lease, [__] [Mobile-Sierra], [__] [Facsimile or Electronic Delivery], and [__] Binding Effect] of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) Governing Law. This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) Jurisdiction. Each party submits to the exclusive jurisdiction of (a) the courts
of the state of New York located in the Borough of Manhattan, (b) the federal courts of the
United States of America for the Southern District of New York or (c) the federal courts of the
United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent
permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action
or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

By:  ……………………………………..   By:

Name:        Name: 
Title:        Title:

PPA BUYER

FINANCING PARTY

By:  ……………………………………..

Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]
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.

Assigned Product: [Describe and define]

Further Information: [Include, if any]

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

---

1 The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.

2 To include transfer and settlement mechanics for RECs, as applicable.
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>PIVOT ENERGY PPA 27 LLC, a Colorado limited liability company (“Seller”)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</th>
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<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 1750 15th Street, Suite 400</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Denver, CO</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Jackie Murphy, Chief Legal Officer</td>
<td>Attn: Chief Executive Officer</td>
</tr>
<tr>
<td>Phone: (888) 734-3033</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Email: <a href="mailto:legal@pivotenergy.net">legal@pivotenergy.net</a></td>
<td>E-mail: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
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<tr>
<td>Attn: Amy Nupen, Controller</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Phone: (888) 734-3033</td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
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<tr>
<td>E-mail: <a href="mailto:accounting@pivotenergy.net">accounting@pivotenergy.net</a></td>
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<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn: Angela Burke, Operations</td>
<td>Attn: Day Ahead Scheduling</td>
</tr>
<tr>
<td>Phone: (888) 734-3033</td>
<td>Phone: (817) 303-1104</td>
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<td>Attn: Vice President, Power Supply</td>
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<td>Phone: (888) 734-3033</td>
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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

Exhibit O – 1

Agenda Page 585
In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1.  CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA’s rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent’s instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, (a) if possession of the Project is
necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) CPA that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (a “Permitted Transferee”). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall
have the right to require that the Collateral Agent and its designee (if applicable) provide
reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a
Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in
this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under
such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or
Replacement PPA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest
in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business
trust, joint venture, joint stock company, association, company, limited liability company,
partnership, Governmental Authority or other entity (a “Person”) to which the Project is
transferred; provided, the proposed transferee shall have demonstrated to CPA’s reasonable
satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably
satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement
Owner under the PPA or Replacement PPA, as applicable, including posting and collateral
assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA
Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such
Replacement PPA, the transferor shall be released from any further liability under the PPA or
Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required
to perform Project Company’s obligations under the PPA, including posting and collateral
assignment of the PPA Collateral; provided, the obligations of such Substitute Owner shall be no
more than those of Project Company under the PPA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall
have any liability or obligation under the PPA as a result of this Consent (except to the extent
Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall
Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project
Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the
extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii)
take any action to collect or enforce any claim for payment assigned under the Financing
Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into
a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA
or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations
against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project;

Exhibit O - 4
such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA’s obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA’s obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

SECTION 2. PAYMENTS UNDER THE PPA
2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent’s instructions.

2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA, except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.
Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA’s actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 **No Previous Assignments.**

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

SECTION 4. **REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY**

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

4.1 **Organization.**

Project Company is a [Legal Status of Seller] duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 **Authorization.**

The execution, delivery and performance of this Consent by Project Company, and Project Company’s assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 **Execution and Delivery; Binding Agreement.**

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).
4.4 **No Default or Amendment.**

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company’s actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company’s actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 **No Previous Assignments.**

Project Company has not previously assigned all or any part of its rights under the PPA.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT**

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

5.1 **Authorization.**

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2 **Execution and Delivery; Binding Agreement.**

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

SECTION 6. **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
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.

<table>
<thead>
<tr>
<th>Pivot Energy PPA 27 LLC, a Colorado limited liability company.</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</th>
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<td><strong>Tom Hunt</strong></td>
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<td><strong>Authorized Representative</strong></td>
<td><strong>[Title]</strong></td>
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<tr>
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SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
EXHIBIT P

MATERIAL PERMITS

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<td>2</td>
<td>Electrical</td>
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EXHIBIT R

METERING DIAGRAM

To be determined during full engineering process and updated prior to COD

Exhibit R – 1

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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.
# RENEWABLE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller**: Pivot Energy PPA 28 LLC, a Colorado limited liability company

**Buyer**: Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility**: A 0.270 MW photovoltaic generating facility located on the roof of Extra Space Storage at 4344 San Gabriel River Pkwy, Pico Rivera, CA 90660

### Milestones:

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<th>Milestone</th>
<th>Expected Date for Completion</th>
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<tr>
<td>Evidence of Site Control</td>
<td>September 3, 2021</td>
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<td>Documentation of Conditional Use Permit if required:</td>
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<td>June 14, 2022</td>
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<td>December 31, 2022</td>
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<td>Initial Synchronization</td>
<td>December 7, 2023</td>
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<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>December 7, 2023</td>
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<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>December 11, 2023</td>
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<tr>
<td>Expected Commercial Operation Date</td>
<td>December 21, 2023</td>
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**Delivery Term**: Fifteen (15) Contract Years

**Delivery Term Expected Energy**: REDACTED
**Guaranteed Capacity:** 0.270 MW of total Facility capacity

**Guaranteed Construction Start Date:** September 30, 2023

**Guaranteed Commercial Operation Date** December 31, 2023

**Contract Price:** The Contract Price shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price ($/MWh)</th>
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<tbody>
<tr>
<td>1 – 15</td>
<td>/MWh (flat) with no escalation</td>
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</table>

**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 ____________ (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 4.4(d).
“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Available Capacity” means the capacity of the Facility, expressed in whole MWs, that is available to generate Energy.

“Bankrupt” or “Bankruptcy” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Assignment Agreement” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the 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 MWhs 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 4.8(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Resource ID” has the same meaning as “Resource ID” 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).

“Community Sponsor” means a local non-profit community-based organization or local government entity that is located in Buyer’s service territory and sponsors the Facility on behalf of the residents of the community.

“Compliance Actions” has the meaning set forth in Section 3.14(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.14.
“Concurrence Letter” means authorization from the Utility Distribution Company that the Facility may participate in Buyer’s Distributed Energy Resource Aggregation (as such term is defined in the CAISO Tariff).

“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; provided, if, prior to the Commercial Operation Date, there is a change in applicable Laws that increases the ITC rate applicable to the Facility, Seller shall provide Notice to Buyer of the effective date of such Law and the Contract Price shall be reduced by per MWh for each percentage point that the new ITC rate is above .

“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 4.4(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 4.8(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (i) cash, or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 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 Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Facility, measured in kilowatt-hours or multiple units thereof.

“Energy Replacement Damages” has the meaning set forth in Section 4.7.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Section 3.3(b).

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point.

“Facility Energy” means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“Facility Meter” means the CAISO approved 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 4.4(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 4.8(a).

“Future Environmental Attributes” shall mean any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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 4.7.

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.
“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection 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 0.300 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.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kW” means kilowatt measured in alternating current, unless expressly stated in terms of direct current.

“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 development, 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, maintenance, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Locational Marginal Price” or “LMP” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and Renewable Energy Incentives. If Seller is the Non-Defaulting Party, the value of any Renewable Energy Incentives and Tax Credits, determined on an after-tax basis, lost due to Buyer’s Event of Default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives and Tax Credits, if any, shall be included in the calculation of “Losses” which Seller may recover.

“Lost Output” has the meaning set forth in Section 4.7.

“Low-Income Community Bonus” has the meaning set forth in H.R. 5376 Section 13103.

“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 SQMD Charge” has the meaning set forth in Section 4.1.

“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 4.6(a).

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category**” means PCC1, PCC2 or PCC3, as applicable.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Content Category 2**” or “**PCC2**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Content Category 3**” or “**PCC3**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning on the Cover Sheet.

“**Production Tax Credit**” or “**PTC**” means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.
“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to distribution-interconnected rooftop solar generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**Real-Time Forecast**” has the meaning set forth in Section 4.4(d).

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

“**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.

“Second Agreement” means that Renewable Power Purchase Agreement by and between Clean Power Alliance of Southern California, a California joint powers authority, as Buyer and Pivot Energy PPA 27 LLC, as Seller, dated as of [redacted], as such agreement may be amended or modified.

“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 Pre-COD Liability Cap” has the meaning set forth in Section 11.9.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary
to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, 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.

“SQMD Plan” has the meaning set forth in the CAISO Tariff.

“SQMD Reporting” has the meaning set forth in Section 4.1.

“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” mean 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 Pivot Energy Development LLC, a Colorado limited liability company.

“Utility Distribution Company” means any entity that owns, operates and maintains distribution lines and associated facilities and/or has entitlements to use certain distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and
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 3.7, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Within one hundred eighty (180) days following Seller’s receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval ("Approval Application"). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Meter Service Agreement between Seller and CAISO and a Concurrence Letter from the Utility Distribution Company shall have been executed and delivered and be in full
force and effect, and a copy of each such agreement delivered to Buyer, and the Installed Capacity under this Agreement and the Second Agreement total at least 500 kW;

(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 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.

2.5 Low-Income Community Bonus. Seller shall make commercially reasonable efforts to qualify for and receive the Low-Income Community Bonus. Seller shall give Notice to Buyer within five (5) Business Days of Seller’s receipt of notice from any Governmental Authority regarding the outcome of Seller’s request or application to receive such Low-Income Community Bonus. Buyer shall use commercially reasonable efforts to provide information reasonably requested by Seller in support of Seller’s obligations pursuant to this Section 2.5.

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 thereafter 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, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.12 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

3.13 **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 3.12, 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 ($25) per kW 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 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 Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D. In consideration of Buyer’s performance of its obligation to submit Settlement Quality Meter Data for the Facility to CAISO in accordance with Exhibit D (“SQMD Reporting”), Seller shall pay or cause to be paid to Buyer for each month for which Buyer provides SQMD Reporting for the Facility an amount equal to Seller’s share of Buyer’s cost of providing such service, which amount shall be equal to Five Hundred Dollars ($500) per CAISO
Resource ID for which Buyer submits Settlement Quality Meter Data (“Monthly SQMD Charge”). If the Parties mutually agree in their sole discretion to allow a third party selected by Seller to submit such Settlement Quality Meter Data to CAISO, then as of the later of (i) the date Seller provides Notice of such election to Buyer, and (ii) the effective date that any such change is approved by the CAISO (to the extent required), Buyer shall no longer provide any such SQMD Reporting and the Monthly SQMD Charge will terminate.

(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. For avoidance of doubt, provision of new or different Energy related products that results in a reduction to the Energy output of the Facility shall be deemed a material adverse effect on Seller’s obligations or liabilities under this Agreement.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 [Reserved].

4.4 **Forecasting.** Seller shall provide the 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 an amount equivalent to at least the Installed Capacity (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 an amount equivalent to at least the Installed Capacity 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, 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. 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 4.4(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 Distributed Energy Resource Aggregations under the CAISO Tariff, including complying with CAISO dispatch and operating instructions and providing appropriate operational data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO in providing all data, information, and authorizations required thereunder.

**4.5 Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order 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 reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance.

(i) Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i).

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). “Guaranteed Energy Production” means an amount of Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer 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.

4.8 **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 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.
(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified
by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

ARTICLE 5
TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.
6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided, such agreements 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. All Facility Meters will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller’s sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of the CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Seller shall separately meter all Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Buyer or its designated Scheduling Coordinator shall act as the Scheduling Coordinator Metered Entity for the Facility. Seller shall take commercially reasonable actions to assist Buyer or its designated SC in satisfying the requirements of the CAISO Tariff in connection with its role as the Scheduling Coordinator Metered Entity. Metering will be reasonably consistent with the Metering Diagram set forth as Exhibit R. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) application and or directly from the CAISO meter(s) at the Facility.

7.2 Meter Verification. Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate
by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such
evidence exists such date will be used to adjust prior invoices), then the invoices covering the
period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the
assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such
period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and
WREGIS.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for
Product no later than the tenth (10th) day of each month for the previous calendar month. Each
invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data
sufficient to document and verify the amount of Product delivered by the Facility for any
Settlement Period during the preceding month, including the amount of Product in MWh delivered
during the prior billing period, the amount of Product in MWh produced by the Facility as read by
the CAISO Approved Meter, the calculation of Deemed Delivered Energy, and the amount of
Replacement Product delivered during the preceding month; and (b) be in a format reasonably
specified by Buyer, covering the Product provided in the preceding month determined in
accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with
reasonable access to any records, including invoices or settlement data from CAISO, necessary to
verify the accuracy of any invoices. The invoice for each month for which Buyer provides SQMD
Reporting shall include a credit in the amount of the Monthly SQMD Charge owed by Seller to
Buyer for such month.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts
due) by wire transfer or ACH payment to the bank account provided on each monthly invoice.
Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s
receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational
month for which such invoice was rendered; provided, if such due date falls on a weekend or legal
holiday, such due date shall be the next Business Day. Payments made after the due date will be
considered late and will bear interest on the unpaid balance. If the amount due is not paid on or
before the due date or if any other payment that is due and owing from one Party to another is not
paid on or before its applicable due date, a late payment charge shall be applied to the unpaid
balance and shall be added to the next billing statement. Such late payment charge shall be
calculated based on an annual Interest Rate equal to the prime rate published on the date of the
invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the
next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date
occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the
next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall
maintain all books and records necessary for billing and payments, including copies of all invoices
under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon
fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the
accounting books and records within the possession or control of the other Party pertaining to all
invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with
California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment pursuant to Section 7.2.. 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; provided, Seller has no obligation to replenish the Development Security after any draw or collection by Buyer to an amount in excess of the Seller Pre-COD Liability Cap. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall
return the Development Security to Seller, plus any accrued interest, if any, if Development Security was posted as cash, less the amounts drawn in accordance with this Agreement. Seller may at its option exchange one permitted form of Development Security for another permitted form of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security plus accrued interest, if any, if such Performance Security is posted as cash. Seller may at its option exchange one permitted form of Performance Security for another permitted form of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller within one hundred eighty (180) days following the end of each fiscal year and upon Seller’s request annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

**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, tornados, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the
cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event or Development Cure Period.

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that such delays did not result from Seller’s actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof.
(or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable;

(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; or

(vii) such Party defaults under the Second Agreement, and after expiration of applicable notice and cure period under such Second Agreement, if any, the non-defaulting party under the Second Agreement terminates such Second Agreement.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(vi) if the officer’s certificate provided pursuant to Section 2.2(i) specifies that Seller will utilize PTC for financing the Facility.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that
terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage Payment: Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall, subject to the Seller 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. If the Development Security amounts drawn by Buyer plus other amounts incurred by Seller prior to such termination exceed the Buyer will promptly return such excess amounts to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would
be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“Termination Payment”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or in the event of a termination pursuant to Section 11.3(a)(ii), ninety (90) days), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party
other than Buyer for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR
A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.
ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison’s service territory, and (ii) will be located within an eligible DAC within five (5) miles of the DAC census tracts in which subscribing customers of Buyer reside.

(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.

(g) The Facility shall have a Community Sponsor during the Delivery Term.
13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and Seller shall remain compliant with such agreement in accordance with the terms thereof.

**ARTICLE 14
ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith (i) 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”), and (ii) at Seller’s reasonable request, execute and deliver any customary estoppel certificates to this Agreement, or other similar documents in favor of Lender, in form and substance reasonably
satisfactory to Buyer; 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.

14.3 **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), (b) Baa3 from Moody’s and BBB- from S&P, and (c) 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. 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.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual
property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “IP Indemnity Claim”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; provided, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars ($1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars ($1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.
(b) **Employer’s Liability Insurance.** At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers’ liability insurance of not less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) **Business Auto Insurance.** At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** During the construction of the Facility prior to the Commercial Operation Date, Seller shall maintain, or cause to be maintained, at its sole expense construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Subcontractor Insurance.** At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through (f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, such failure shall be a failure to perform a material covenant or obligation set forth in this Agreement and, as such, shall constitute an Event of Default pursuant to Section 11.1(a)(iii) after Notice thereof from Buyer and failure to cure according to
the timeframes set forth therein. 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 except that if any required insurance is no longer
commercially available to Seller, then the failure to comply related thereto will not be an Event of
Default hereunder and the Parties will meet and confer to discuss a suitable and mutually agreeable
replacement or other alternative for such insurance.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential
Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller
including: (a) the terms and conditions of, and proposals and negotiations related to this
Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as
“confidential” or “proprietary” before disclosing it to the other. Confidential Information does not
include (i) information that was publicly available at the time of the disclosure, other than as a
result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available
through no fault of the recipient after the time of the delivery; (iii) information that was rightfully
in the possession of the recipient (without confidential or proprietary restriction) at the time of
delivery or that becomes available to the recipient from a source not subject to any restriction
against disclosing such information to the recipient; and (iv) information that the recipient
independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information
(the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose
Confidential Information to a third party (other than the Party’s employees, lenders, counsel,
accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a
need to know such information and have agreed to keep such terms confidential) except in order
to comply with any applicable Law, regulation, or any exchange, control area or independent
system operator rule or in connection with any court or regulatory proceeding applicable to such
Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable
efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at
law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The
Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing
any one or more of the commercial terms of a transaction (other than the name of the other Party
unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose
of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into
in connection herewith are subject to the requirements of the California Public Records Act
(Government Code Section 6250 et seq.). In order to designate information as confidential, the
Disclosing Party must clearly stamp and identify the specific portion of the material designated
with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party 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.

PIVOT ENERGY PPA 28 LLC, a Colorado 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: San Gabriel – Extra Space Storage (ESS)

Site includes all or some of the following APNs: 8122-005-039

City: Pico Rivera

County: Los Angeles

Zip Code: 90660

Latitude and Longitude: 34.007679° -118.069805°

Facility Description: Rooftop 363kWdc / 270kWac Solar Photovoltaic Solar System

Delivery Point: Point of Delivery at new SCE 12kV switch located on riser pole near existing utility pole #1011362E

PNode: To be assigned during CAISO NRI process

Transmission Provider: Southern California Edison

Additional Information: 4344 San Gabriel River Pkwy, Pico Rivera, CA 90660

Exhibit A - 1
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 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

Exhibit B - 2

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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 Dollars ($250) for each kW 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 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, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(c) **CAISO Costs and Revenues.** Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or

Exhibit D - 1
penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(d) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“**CAISO Charges Invoice**”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) **Master Data File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(h) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.

(i) **SQMD Reporting.** If Seller elects to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan(s), Seller shall provide or
cause to be provided to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, Settlement Quality Meter Data no more than six (6) Business Days after the relevant flow date. In connection with any SQMD Plan(s), as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller in the SQMD Plan submission and approval process and perform the obligations required by the SQMD Plan or the CAISO applicable to Scheduling Coordinators with respect to submitting Settlement Quality Meter Data to the CAISO including without limitation submitting required affirmations and attestations (if any). Buyer (as Scheduling Coordinator) shall be responsible for submitting Settlement Quality Meter Data to the CAISO using the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan(s) and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer as a result of Seller’s failure to provide or have provided Settlement Quality Meter Data consistent with the SQMD Plan(s) to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator), with respect to the Facility Meters and/or only the Storage Facility Meters, as applicable, within the timeframe required by this Section (i).
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

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 |
|---|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F-2

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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|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[
[(A - B) \times (C - D)] - (E + F)
\]

where:

\( A \) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

\( B \) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

\( C \) = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes.

\( D \) = the Contract Price, in $/MWh

\( E \) = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

\( F \) = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is \((C - D)\)

“\textit{Adjusted Energy Production}” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“\textit{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.

“\textit{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 H - 1

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EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The installed nameplate capacity of the Facility is __ MW AC ("Installed Capacity").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ________ day of _____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

  By: ______________________________

  Its: ______________________________

  Date: ___________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of the Construction Start Date (“Certification”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the “Construction Start Date”); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

____________________________________________________________________

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

[SELLER ENTITY]

By: ________________________________

Its: ________________________________

Date: ______________________________
EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such
other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

____________________________________
[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $__________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date __________________________
EXHIBIT L

FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among [PPA Seller], a [______________] (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [Financing Party] (“Financing Party”), and relates to that certain power purchase agreement (the “PPA”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “Parties” hereto; each is a “Party”) agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). 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, 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) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (ii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Financing Party of any Notice (as defined in the PPA) 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; (iv) PPA Buyer will provide copies to Financing Party of annual forecasts of Metered Energy and monthly forecasts of Available Capacity provided by PPA Seller pursuant to Sections 4.4(a) and (b) of the
PPA; (v) PPA Buyer will provide copies to Financing Party of all invoices and supporting data provided by PPA Seller pursuant to Section 8.1, provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Buyer will not be obligated to deliver copies of any communications relating thereto to Financing Party; and (vi) PPA Buyer will provide copies to Financing Party of any other information reasonably requested by Financing Party relating to Assigned Products.

(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.

(f) Financing Party may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of PPA Seller.

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. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the 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

(c) The Assignment Period shall automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the PPA, 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.

(d) 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 [__] [Buyer’s Representations and Warranties]; Section [__] [Limitation of Liability and Exclusions of Warranties, Article [__] [Confidential Information], Sections [__] [Severability], [__] [Counterparts], [__] [Amendments] and [__] [No Agency, Partnership, Joint Venture or Lease, [__] [Mobile-Sierra], [__] [Facsimile or Electronic Delivery], and [__] Binding Effect] of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) Governing Law. This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) Jurisdiction. Each party submits to the exclusive jurisdiction of (a) the courts
of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

By: ...........................................
   ...........................................
   Name:  
   Title:  

PPA BUYER

By: ...........................................
   ...........................................
   Name:  
   Title:  

FINANCING PARTY

By: ...........................................
   ...........................................
   Name:  
   Title:  

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: ...........................................
   ...........................................
   Name:  
   Title:  

Appendix 1

Assigned Rights and Obligations

PPA: The 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.

Assigned Product: [Describe and define]

Further Information: [Include, if any]2

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

---

1 The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.

2 To include transfer and settlement mechanics for RECs, as applicable.
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>PIVOT ENERGY PPA 28 LLC, a Colorado limited liability company (“Seller”)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</th>
</tr>
</thead>
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<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td><strong>Street:</strong> 1750 15th Street, Suite 400</td>
<td><strong>Street:</strong> 801 S Grand, Suite 400</td>
</tr>
<tr>
<td><strong>City:</strong> Denver, CO</td>
<td><strong>City:</strong> Los Angeles, CA 90017</td>
</tr>
<tr>
<td><strong>Attn:</strong> Jackie Murphy, Chief Legal Officer</td>
<td><strong>Attn:</strong> Chief Executive Officer</td>
</tr>
<tr>
<td><strong>Phone:</strong> (888) 734-3033</td>
<td><strong>Phone:</strong> (213) 269-5870</td>
</tr>
<tr>
<td><strong>Email:</strong> <a href="mailto:legal@pivotenergy.net">legal@pivotenergy.net</a></td>
<td><strong>Email:</strong> <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
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<td><strong>Invoices:</strong></td>
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<tr>
<td><strong>Attn:</strong> Amy Nupen, Controller</td>
<td><strong>Attn:</strong> CPA Settlements</td>
</tr>
<tr>
<td><strong>Phone:</strong> (888) 734-3033</td>
<td><strong>Phone:</strong> (213) 269-5870</td>
</tr>
<tr>
<td><strong>E-mail:</strong> <a href="mailto:accounting@pivotenergy.net">accounting@pivotenergy.net</a></td>
<td><strong>E-mail:</strong> <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
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<tr>
<td><strong>Attn:</strong> Angela Burke, Operations</td>
<td><strong>Attn:</strong> Day Ahead Scheduling</td>
</tr>
<tr>
<td><strong>Phone:</strong> (888) 734-3033</td>
<td><strong>Phone:</strong> (817) 303-1104</td>
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<td><strong>Email:</strong> <a href="mailto:operationsandmaintenance@pivotenergy.net">operationsandmaintenance@pivotenergy.net</a></td>
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<tr>
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<tr>
<td><strong>Attn:</strong> Angela Burke, Operations</td>
<td><strong>Attn:</strong> Vice President, Power Supply</td>
</tr>
<tr>
<td><strong>Phone:</strong> (888) 734-3033</td>
<td><strong>Phone:</strong> (323) 640-7662</td>
</tr>
<tr>
<td><strong>Email:</strong> <a href="mailto:operationsandmaintenance@pivotenergy.net">operationsandmaintenance@pivotenergy.net</a></td>
<td><strong>E-mail:</strong> <a href="mailto:energycontracts@cleanpoweralliance.org">energycontracts@cleanpoweralliance.org</a></td>
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</tr>
<tr>
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<td><strong>E-mail:</strong> <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
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<td><strong>BNK:</strong> TBD</td>
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</tr>
<tr>
<td><strong>ACCT:</strong> TBD</td>
<td><strong>ACCT:</strong> XXXXXX8042</td>
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</table>
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

Exhibit O – 1
In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1.  CONSENT TO ASSIGNMENT, ETC.

1.1  Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA’s rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2  Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CPA is authorized to act in accordance with Collateral Agent’s instructions, and that CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3  Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, (a) if possession of the Project is
necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 **Substitute Owner.**

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a “Financing Document Default Notice”) CPA that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience [TBD] (a “Permitted Transferee”). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 **Replacement Agreements.**

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall
have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 **Transfer.**

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; provided, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 **Assumption of Obligations.**

(a) **Transferee.**

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) **Substitute Owner.**

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including posting and collateral assignment of the PPA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) **No Liability.**

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project;
such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA’s obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA’s obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.
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 and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

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. **MISCALLANEOUS**

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 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.

Exhibit O - 9
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.

<table>
<thead>
<tr>
<th>Pivot Energy PPA 28 LLC, a Colorado limited liability company</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>By:</strong></td>
<td><strong>By:</strong></td>
</tr>
<tr>
<td>____________________________________________________________</td>
<td>_____________________________________________</td>
</tr>
<tr>
<td><strong>Tom Hunt</strong></td>
<td><strong>[Name]</strong></td>
</tr>
<tr>
<td><strong>Authorized Representative</strong></td>
<td><strong>[Title]</strong></td>
</tr>
<tr>
<td>Date: ___________________________</td>
<td>Date: ___________________________</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TBD</strong></td>
<td></td>
</tr>
<tr>
<td><em>[Legal Status of Collateral Agent]</em></td>
<td></td>
</tr>
<tr>
<td><strong>By:</strong></td>
<td></td>
</tr>
<tr>
<td>____________________________________________________________</td>
<td></td>
</tr>
<tr>
<td><strong>[Name]</strong></td>
<td></td>
</tr>
<tr>
<td><strong>[Title]</strong></td>
<td></td>
</tr>
<tr>
<td>Date: ___________________________</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
## EXHIBIT P
### MATERIAL PERMITS

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Building</td>
</tr>
<tr>
<td>2</td>
<td>Electrical</td>
</tr>
</tbody>
</table>
EXHIBIT Q

[RESERVED]
EXHIBIT R

METERING DIAGRAM

To be determined during full engineering process and updated prior to COD
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.
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 Radiant BMT, LLC, a California 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. Seller has provided notice of facts or circumstances resulting in both cost increases and delays to the Milestone schedule, including delays in achieving Construction Start on or before the Guaranteed Construction Start Date and delays in achieving Commercial Operation on or before the Guaranteed Commercial Operation Date (“GCOD”).

C. The Parties intend to resolve all matters with respect to both project costs and milestone delays by entering into this Amendment, on the terms set forth herein.

D. This Amendment is subject to approval by the California Public Utilities Commission (“CPUC”).

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.

2. Amendments to the Agreement.

   a. In the Guaranteed Construction Start Date section of the Cover Sheet, the date “8/1/23” is deleted and replaced with “8/1/24”.

   b. In the Guaranteed Commercial Operation Date section of the Cover Sheet, the date “12/31/23” is deleted and replaced with “12/31/24”.

   c. In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:
<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected Construction Start Date</td>
<td>11/15/24</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>11/15/24</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>12/1/24</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>12/31/24</td>
</tr>
</tbody>
</table>

(d) The Contract Price table on the Cover Sheet is replaced in its entirety with the following table:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$X/MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>

3. Condition Precedent to Amendment Effectiveness. Within ninety (90) days following the Amendment Effective Date, Buyer will submit this Amendment to the CPUC via an advice letter seeking CPUC Approval. “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 Amendment in its entirety. 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. Seller agrees to actively support the advice letter, as reasonably requested by Buyer. If CPUC Approval of this Amendment is not obtained within one hundred eighty (180) days following the Amendment Effective Date, then this Amendment shall have no force or effect.

4. Limited Effect. Except as expressly provided in this Amendment, (a) 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, and (b) this Amendment will have no force and effect unless and until CPUC Approval is obtained. 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 date of CPUC Approval, 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:”

Radiant BMT, LLC

By: ____________________________

Printed Name: Todd Thorner
Title: Manager

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: ____________________________

Printed Name: Ted Bardacke
Title: Chief Executive Officer
RECOMMENDATION

In accordance with direction provided by the CPA Executive Committee, the following actions are recommended:

a. Adopt Salary Grades for CPA Employees, as contained in Attachment 1
b. Direct Staff to Develop Options for a Retention Incentive Program for Board Consideration in 2023
c. Approve and Authorize the Board Chair to Execute the Amended and Restated Employment Agreement with the Chief Executive Officer at a base annual salary of $450,000 with the terms as specified in Attachment 2
d. Approve and Authorize the Board Chair to Execute the Amended and Restated Employment Agreement with the General Counsel at a base annual salary of $413,919 with the terms as specified in Attachment 3
e. Adopt Resolution 22-12-045 (Attachment 4) modifying CPA’s Employee Handbook as specified in Attachment 5

BACKGROUND

CPA is an organization that delivers high levels of renewable energy and impactful programs at competitive rates by managing more than $1 billion in annual revenue and associated market risk, being nimble in an energy industry that is rapidly changing and subject to a complex political and regulatory environment, and by working with over 150 million rows of data in numerous large datasets generated by over one million customer...
accounts monthly. It does this with a relatively small staff of specialized professionals; staffing costs in the current year, including benefits, are budgeted to be approximately 1.3% of total revenue. CPA also does not carry any long-term pension or defined-benefit retirement obligations.

To attract and retain staff, CPA mostly competes with the private sector. In addition to overall labor market pressures, a more recent nationwide push to accelerate the clean energy transition has significantly increased the competition for the specialized expertise which CPA has and seeks to retain and attract. While staff turnover trends are moving in the right direction – in 2022 CPA was able to hire 2.2 people for every departure compared to 1.9 people for every departure in 2021 – achieving the appropriate level of staffing remains a challenge.

This challenge is particularly acute at the middle and senior levels of the organization. In 2022, four staff at the Director level or above – including Natasha Keefer, VP of Power Supply – have departed for the private sector. Meanwhile, the organization has key operational positions at the Manager level and above that go unfilled for months, many times without CPA even being able to establish suitable candidate pools.

CPA’s salaries and benefits have not been comprehensively updated since September of 2019 (Benefits/Employee Handbook) and March of 2021 (Salary Grades, using 2020 market comparison data). CPA re-contracted with Mercer, a leading Human Resources and Compensation consultant, to benchmark its current salaries and Salary Grades against those in the market in which it competes for talent.¹

The following two charts summarize the findings of the benchmarking effort. Broadly they show that CPA is barely competing for talent when compared against general industry and falling below the 50th percentile compared to total cash compensation (TCC) in the

¹ In 2020, CPA contracted with Mercer and 3 other CCA’s to establish job architecture, do compensation and benefits benchmarking, and establish Salary Grades. The salary and benefits benchmarking study examined the competitiveness of CPA’s compensation and benefits against a range of industries and public sector entities. The focus of the study was on CPA’s competitive positioning in the areas of base salary, total cash compensation (TCC), and benefits. Compensation data was utilized from industry areas where CPA competes for talent and employee retention. For the benefits portion of the study, a value comparison of all benefits was conducted in the areas of retirement/savings, health/group, paid leave, and life insurance and disability. Mercer also assisted CPA with designing a job architecture to define career streams, levels, and job families that differentiate types of careers, levels of accountability, and map employees to the new job architecture. Results of this engagement were presented to the CPA Board of Directors in March of 2021 in conjunction with Board approval of 2021 Salary Grades.
Utilities/Energy sector. At the management level CPA is now below the 25th percentile in TCC.

In consultation with CPA’s Executive Committee and advised by Mercer, a package of recommendations is being presented to the Board for consideration. The package is designed to help with retention and recruitment, update policies and procedures to align with legal changes and the new realities of the post-Covid labor market, and engage in
additional study to consider whether additional enhancements in the area of retention are warranted.

**2023 SALARY GRADES**

CPA contracted with Mercer to establish the Board-approved 2021 salary grades and earlier this year re-engaged with Mercer to examine the competitiveness of CPA’s compensation and benefits. Compensation data from Mercer-published salary survey sources were utilized from two distinct categories with whom CPA competes for talent and employee retention: general industry and energy/utilities. The focus of the study was on CPA’s competitive positioning in the areas of total cash compensation (TCC).²

Mercer benchmarked 27 CPA positions and compared CPA’s pay to market data. The market data is customized not only to CPA’s size and location, but also to each employee’s role. To align CPA salary grades for market competitiveness, Mercer recommended the proposed 2023 Salary Grades. The new grades incorporate two years of COLA (6.0% awarded in 2022 and the projected 7.5% in 2023) and a 2.6% market adjustment factor that was calculated by comparing CPA salaries to Mercer’s extensive salary database. Additionally, Mercer recommended aligning executive position salary ranges (grades 115-117) based on TCC, like is done for all other salary grades.³ Since retention of key management personnel is of prime importance at this time, Mercer indicated that resetting Executive salaries to at least the midpoint of their salary grades on January 1, 2023, which would occur in lieu of the scheduled COLA for these positions, was the best immediate course of action.

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² TCC = base salary plus short-term incentives.
³ In 2021, Salary Grades 115 – 117 were set using just base salary, not TCC.
RETENTION INCENTIVE DEVELOPMENT

Although a full benefits valuation analysis was not completed by Mercer this year, Mercer’s 2020 study data showed that CPA had a competitive benefits package overall, except when compared to public sector organizations that often have large benefit packages – mostly defined benefit retirement plans – to make up for their lack of incentive pay. CPA has neither a defined benefit retirement plan nor an incentive pay plan. This puts CPA at a disadvantage in retaining employees, particularly in this competitive labor market. Staff is prepared to work with Mercer to develop Retention Incentive options for the Board to consider next year. Examples of Retention Incentives could range from incentive pay that would be available after a certain period of tenure at CPA to student loan forgiveness or other educational benefits that are particularly suited for CPA’s millennial-dominated employee base.

CONTRACT AMENDMENTS FOR CEO AND GENERAL COUNSEL

Two of CPA’s top employees, the CEO and General Counsel, have direct 5-year contracts with the Board that were executed in November of 2021. Both of them had strong performance reviews by the Executive Committee last month and have played a key role in overall organizational success.

Inflationary and market pressures, as well as a move towards looking at TCC when benchmarking management salary levels within the CCA sector, have resulted in the CEO’s salary falling towards the bottom of CCA CEO salaries, in line with CCAs that are either one-fourth the size or in start-up mode rather than with peer organizations. The proposed contract amendment would bring CPA’s CEO salary back into the top third of
the CCA CEO list, commiserate with the size, influence, and managerial responsibility at CPA. See the comparison chart below.

<table>
<thead>
<tr>
<th>CCA</th>
<th>CEO Total Cash Compensation (as of Jan 2023)</th>
<th>Annual Revenue (FY 21/22)</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Bay Community Energy</td>
<td>$500,000 ($425,000 base, $50,000 retention, ~$25,000 other cash benefits)</td>
<td>$555 million</td>
</tr>
<tr>
<td>Silicon Valley Clean Energy</td>
<td>$457,000 ($425,000 base, ~$32,000 other cash benefits)</td>
<td>$243 million (FY20/21)</td>
</tr>
<tr>
<td>MCE (Formerly Marin Clean Energy)</td>
<td>$425,130</td>
<td>$487 million</td>
</tr>
<tr>
<td>Central Coast Community Energy</td>
<td>$425,000</td>
<td>$288 million (FY 20/21)</td>
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<td>Peninsula Clean Energy</td>
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<td>Clean Power Alliance</td>
<td>$397,000*</td>
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<td>Sonoma Clean Power</td>
<td>$395,000</td>
<td>$187 million (FY 20/21)</td>
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<tr>
<td>San Diego Community Power</td>
<td>$375,000</td>
<td>N/A (Start Up)</td>
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*Assumes 7.5% COLA on Jan 1, 2023 per current contract

The General Counsel’s current contract was structured to gradually bring her salary into line with the market over the course of a five-year period. The proposed amendment to her contract is designed to align with changing market conditions and to avoid her falling behind her peers within CPA.

**UPDATES AND REVISIONS TO EMPLOYEE HANDBOOK**

Updates and revisions to the Employee Handbook are being proposed for three primary purposes: (1) to revise benefits related to vacation and parental leave that recognize the longevity of some CPA employees and affirm CPA’s status as a family-friendly employer and; (2) to ensure compliance with current laws and laws effective January, to clarify certain administrative procedures, and to promote consistency with language.
**Vacation and Parental Leave Changes Summary**

Key proposed changes to CPA’s vacation policy include:

- An administrative change to combine current vacation (80 hours) and PTO (40 hours) awards in the first year of employment into a single program
- Award 40 additional hours upon beginning the year of the employee’s 2\textsuperscript{nd}, 4\textsuperscript{th}, and 6\textsuperscript{th} years of service
- Cap vacation accrual at 2x the annual award amount, up from the current 1.5x
- Introduce a limited vacation cash-out program of up to 80 hours annually, provided that cash-out does not reduce overall vacation balance to below 120 hours.

The vacation accrual cap plus limited cash-out proposal attempts to balance CPA’s operational needs with the desire that employees take their vacation to rejuvenate and avoid burnout, while also limiting the fiscal impact to CPA of staff accumulating large vacation balances.

Key proposed changes to CPA’s parental leave policy include:

- Providing up to 12 weeks of fully Paid Parental Leave, up from the current 8 weeks. Employees will no longer be required to apply for State Disability and/or Paid Family Leave (“PFL”) wage replacement benefits during an employee’s PFL to access CPA benefits
- Employees may still apply for PFL benefits after the initial 12 weeks and take unpaid leave, or use other CPA leave benefits to cover the difference between PFL benefits and their full salary.
- Eligibility criteria will add fostering a child to the eligibility criteria for Paid Parental Leave.

**Compliance with Current/Future Legal Requirements and Administrative Clarifications**

Key proposed changes in this category include:

- Updating titles (CEO, Director of Human Resources/People & Culture)
- Acknowledgment of remote work/telecommuting
• Clarifying decision-making/appeal process with regards to discipline and potential termination to remove CEO from having to rule on all appeals
• Definition of “Essential Duties” that employees are required to complete during the December 25 – January 1 period when the office is closed
• Formal incorporation of a new federal holiday (e.g., Juneteenth)
• Additional language required for CA harassment policies
• Allowing Sick and Bereavement leave for a “designated person” (does not have to be blood-related)
• Modification of language for legally required meal and rest periods
• Modifications to reflect recent amendments to the California Family Rights Act (CFRA) and to highlight distinctions between CFRA and FMLA
• Inclusion of required and recommended language in the lactation break section.

**FISCAL IMPACT**

The proposed action on salary grades and contract amendments would increase salary costs for the current fiscal year by approximately $270,000 and is within the FY 22/23 staffing budget. FY 22/23 staffing costs are lower than budget due in part to slower than expected hiring and staff turnover. This proposed action would increase annualized staffing costs by approximately $550,000, or 3.5% of the expected FY 23/24 staffing budget.

The fiscal impact of the proposed action to change the vacation accrual maximum from 1.5x the annual vacation allocation to 2x the annual allocation is unknown. At the upper bound, in the unlikely event that all staff were to accumulate an additional 0.5x of the annual allocation by not taking vacation, CPA would potentially accrue up to an additional $575,000 of vacation expense based on currently budgeted staffing levels.

The vacation expense associated with vacation days that would be currently eligible for cash-out has already been accrued and cash-outs, were they to occur, would not result in an additional expense to CPA. The future, "steady state" amount of cash-outs will be dependent on employee choice from year-to-year and will be incorporated into future staffing budgets once the steady state can be determined.
ATTACHMENTS

1. Salary Grades for CPA Employees
2. Amended CEO Employment Contract (Redline)
3. Amended General Counsel Employment Contract (Redline)
4. Resolution 22-12-045 Approving Modifications to CPA’s Employee Handbook and Benefits
5. December 2022 Employee Handbook (Redline)
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<th>Midpoint</th>
<th>Maximum</th>
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THIS EMPLOYMENT AGREEMENT (“Employment Agreement”) is entered into by and between the Clean Power Alliance of Southern California, also known as “CPA” and Theodore Bardacke, an individual (“Employee”). CPA and Employee are sometimes collectively referred to herein as the “Parties.” This Agreement is effective as of January 1, 2022 (“Effective Date”).

RECITALS

This Employment Agreement is entered into based on the following facts, understandings, and intentions of the Parties:

A. CPA is a Community Choice Aggregation Program (“CCA Program”) established pursuant to California Public Utilities Code Section 366.2(c)(12) with 32 member counties and cities (“Member Agencies”). These Member Agencies are signatories to the Clean Power Alliance of Southern California Joint Powers Agreement (the “JPA Agreement”) which serves as the operative document in the implementation, administration, and operation of the CCA Program.

B. Section 5.5 of the JPA Agreement provides that the CPA Board of Directors (“Board”) shall appoint an Executive Director Chief Executive Officer for the CPA, who shall be responsible for the day-to-day operation and management of the CPA and the CCA Program and provides for the exercise of powers and authority by the Executive Director Chief Executive Officer.

C. Employee possesses the skill, experience, ability, background, and knowledge to continue to perform the duties and services provided by this Agreement as the Executive Director Chief Executive Officer of CPA.

D. CPA desires to extend Employee’s term of employment on the terms and conditions provided by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. Duties, Authority, and Title of the Executive Director Chief Executive Officer, CPA shall employ Employee as the Executive Director Chief Executive Officer of CPA, with the full power and authority to perform all of the duties and authority of the Executive Director Chief Executive Officer, as provided in the JPA Agreement, and as authorized or delegated by the Board from time to time. The Executive Director will be referred to as CPA’s “Chief Executive Officer” and may utilize this title for all purposes related to the performance of Employee’s duties.
2. **Term.** Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall be for five (5) years, commencing on the Effective Date (the “Term”).

3. **Compensation.** Starting on the Effective Date, CPA shall pay Employee an annual base salary of $369,600 and starting on January 1, 2023, CPA shall pay Employee an annual base salary of $450,000 paid on CPA’s normal paydays, subject to legally permissible or required deductions. Employee’s salary is compensation for all hours worked and for all services under this Agreement. Employee shall be exempt from overtime pay provisions of California law (if any) and federal law.

4. **Salary Adjustments.** Employee’s salary shall be adjusted annually to reflect cost of living increases offered to all CPA employees and any future compensation incentives that may be authorized by the Board of Directors, provided that any increase to Employee’s salary shall not be less than 3% for each calendar year during the Term.

5. **Benefits.** During the Term of this Agreement, Employee shall be entitled to all benefits offered to CPA employees, including but not limited to vacation, group insurance plans, incentive or retirement programs, paid time off, sick leave, and expense reimbursement. Employee acknowledges that CPA may establish additional benefit programs or the benefits offered to CPA employees may be modified, reduced, or eliminated at the discretion of the Board, in accordance with applicable law. Employee shall accrue vacation leave at the rate of 160 hours (4 weeks) each year. Except as otherwise provided in this Agreement, vacation time shall be subject to any CPA vacation policy applicable to employees generally.

6. **Expenses.** Throughout the Term, and subject to the availability of funds, CPA shall reimburse Employee for budgeted and reasonable out-of-pocket expenses incurred in connection with CPA’s business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as CPA may from time-to-time reasonably establish for its employees. Additionally, Employee shall be entitled to reimbursement for Board-approved or budgeted for, continuing education expenses, attendance at conventions, conferences, or membership in professional organizations.

7. **Annual Performance Evaluation.** The Board shall conduct an Annual Performance Review of the Executive Director/Chief Executive Officer. This review will be completed prior to the end of each 12 months of the Term of the Agreement. The Annual Performance Review will include both an evaluation of the Executive Director’s/Chief Executive Officer’s performance during the prior 12 months and the setting of priorities and goals for the upcoming 12 months.

8. **Restrictions on Outside Business Activities and Conflicts.** Throughout the Term, Employee shall devote Employee’s full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without approval of the Executive Committee of the Board, tender to other entities or individual’s services of any kind for compensation or engage in any business activity. In addition, Employee shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of Employee’s duties under this Agreement, including activities that may reasonably be expected to conflict with Employee’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the
9. **Termination of Agreement.**

   a. **Termination by CPA.** Employee is employed at the pleasure of the Board and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

   b. **Termination on Resignation.** Employee may terminate the Agreement by giving CPA at least sixty (60) days (or more if practical) prior written notice. CPA may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

   c. **Termination on Death.** If Employee dies during the term of this Agreement, this Agreement shall be terminated on the date of Employee’s death. All warrants or checks for accrued salary, accrued vacation, or other benefits or items shall be released to the person designated in writing by Employee pursuant to Government Code Section 53245 or, if no designation is made, to Employee’s estate.

10. **Severance.** CPA shall pay Employee for all services through the effective date of termination. Employee shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

   a. If CPA terminates this Agreement (thereby terminating Employee’s employment) without cause, CPA shall pay (a) Employee a lump sum severance benefit equal to six (6) months of Employee’s then-applicable base salary; and (b) for three (3) months of an executive recruiter or placement services of the Employee’s choosing.

   b. If CPA terminates this Agreement (thereby terminating Employee’s employment) with cause, Employee shall not be entitled to any severance or executive recruiter or placement services. As used in this Agreement, cause shall mean termination due to:

      i. A conviction, plea bargain, judgment, or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude, or violation of any statute or law constituting misconduct in office, misuse of public funds, or conflict of interest;

      ii. Conviction of a felony;

      iii. Conviction of a misdemeanor arising out of Employee’s duties under this Agreement and involving a willful or intentional violation of law;

      iv. Willful abandonment of duties;
v. A pattern of repeated, willful, and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

vi. Any other action or inaction by Employee that materially and substantially harms CPA’s interests, materially and substantially impedes or disrupts the performance of CPA, or that is detrimental to employee safety or public safety.

c. If Employee terminates this Agreement (thereby terminating Employee’s employment), Employee shall not be entitled to any severance or executive recruiter or placement services.

d. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the CPA for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

11. **Reimbursement to CPA required.** The following limitations apply to CPA’s obligation to Employee pursuant to paragraph 10 above:

   a. **Paid Leave.** Pursuant to Cal. Government Code Section 53243, in the event the Employee is placed on paid leave pending an investigation, Employee shall reimburse CPA if Employee is subsequently convicted of a crime of moral turpitude or that constitutes “abuse of office or position,” as that is defined by Government Code Section 53242.4;

   b. **Legal Defense.** Pursuant to Government Code Section 53243.1, in the event CPA pays for Employee’s legal criminal defense, Employee shall fully reimburse such funds to CPA if Employee is subsequently convicted of a crime of moral turpitude that constitutes “abuse of office or position;”

   c. **Severance.** Pursuant to Government Code Section 53243.2, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from CPA, including any severance paid under Paragraph 10 must be fully reimbursed to CPA if Employee is subsequently convicted of a crime of moral turpitude or that constitutes “abuse of office or position.”

12. **Miscellaneous Provisions.**

   a. **Integration.** Subject to all applicable Government Code Sections, this Agreement contains the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, commitments, and
practices between the Parties before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the Parties.

b. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances it shall nevertheless remain in full force and effect in all other circumstances.

c. **Notices.** Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to CPA shall be addressed to the Secretary of the Board at the CPAs then principal place of business. Notice to Employee shall be addressed to Employee’s home address, as then shown in CPA’s files.

d. **Agreement is Binding.** This Agreement shall be binding upon and inure to the benefit of CPA, its successors and assigns, and shall be binding upon Employee, Employee’s administrators, executors, legatees, heirs, and assigns.

e. **Waiver.** The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By ________________________________  ________________________________  
Julian Gold, Board Chair  Date

By ________________________________  ________________________________  
Theodore Bardacke  Date

APPROVED AS TO FORM:

By ________________________________  
Nancy Whang, General Counsel
AMENDED AND RESTATED EMPLOYMENT AGREEMENT - CLEAN POWER ALLIANCE
GENERAL COUNSEL NANCY WHANG

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the Clean Power Alliance of Southern California, also known as “CPA” and Nancy Whang, an individual ("Employee"). CPA and Employee are sometimes collectively referred to herein as the “Parties” and individually as “Party”. This Agreement is effective as of January 1, 2022 ("Effective Date").

RECITALS

This Employment Agreement is entered into based on the following facts, understandings, and intentions of the Parties:

A. CPA is a Community Choice Aggregation Program ("CCA Program") established pursuant to California Public Utilities Code Section 366.2(c)(12) with 32 member counties and cities ("Member Agencies"). These Member Agencies are signatories to the Clean Power Alliance of Southern California Joint Powers Agreement (the "JPA Agreement") which serves as the operative document in the implementation, administration, and operation of the CCA Program.

B. Section 4.4 of the JPA Agreement authorize the Board to retain legal counsel and Article III, Section 7 of the Board-adopted Bylaws designate the General Counsel as the attorney for and legal advisor to the Board and CPA.

C. Employee possesses the skill, experience, ability, background, and knowledge to perform the duties and services provided by this Agreement as the General Counsel of CPA.

E. CPA desires to extend Employee’s term of employment on the terms and conditions provided by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. **Duties and Authority of the General Counsel.** CPA shall employ Employee as the General Counsel of CPA with the full power and authority to perform general legal services to the CPA. Employee will perform and carry out in a good and professional manner, the duties and responsibilities of the position of General Counsel, as specified in the Bylaws and as otherwise directed by the CPA Board of Directors ("Board").

   In performance of duties, Employee will devote time, ability, and attention equivalent to the professional effort necessary to fulfill Employee’s duties. Employee’s duties will
require flexibility in work hours and location of work, including attendance at Board or committee meetings.

Employee shall perform the duties required hereunder in accordance with all local, state, and federal laws applicable to CPA operations.

2. Term. Unless earlier terminated as provided for in this Agreement, the term of this Agreement shall be for five (5) years, commencing on the Effective Date (the “Term”).

3. Compensation. Commencing on the Effective Date, CPA shall pay Employee an annual base salary of $287,500 and starting on January 1, 2023, CPA shall pay Employee an annual base salary of $413,919 paid on CPA’s normal paydays, subject to legally permissible or required deductions. Employee’s salary is compensation for all hours worked and for all services under this Agreement. Employee shall be exempt from overtime pay provisions of California law (if any) and federal law. Starting on January 1, 2023, Employee’s base salary (a) shall be increased by 5% each calendar year; and (b) shall be adjusted to reflect general cost of living adjustments, if any, that are offered to CPA employees and any future compensation incentives that may be authorized by the Board of Directors.

4. Benefits. During the Term of this Agreement, Employee shall be entitled to all benefits offered to CPA employees, including but not limited to group insurance plans, incentive or retirement programs, vacation, paid time off, sick leave, and expense reimbursement. CPA may establish additional benefit programs and may modify, reduce, or eliminate any benefit plan or program in its discretion, in accordance with applicable law.

In addition, during the Term and subject to the availability of funds, CPA shall pay or reimburse Employee for the following:

a. Professional Organizations. For reasonable, and necessary membership dues in professional organizations, including the California State Bar.

b. Continuing Education Expenses. For budgeted and reasonable expenses incurred for continuing education expenses, including attendance at conventions and conferences where continuing education credits are offered.

c. Software Access. Access to software services at the level necessary for the completion of legal research and duties.

5. Evaluation of Performance. The Executive Committee of the Board shall conduct an Annual Performance Review of the General Counsel. This review will be completed prior to the end of each 12 months of the Term of the Agreement. The Annual Performance Review will include both an evaluation of the General Counsel’s performance during the prior 12 months and the setting of priorities and goals for the upcoming 12 months. In conjunction with the Annual Performance Review, the Executive Committee may award Employee a merit increase in an amount not to exceed 3% of Employee’s base salary.

6. Restrictions on Outside Business Activities and Conflicts. Throughout the Term, Employee shall devote Employee’s full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without CPA’s prior written consent, tender to other entities or individual’s services of any kind for compensation or engage in any other business activity. In addition, Employee shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of Employee’s duties under
this Agreement, including activities that may reasonably be expected to conflict with the General Counsel duties. Employee shall comply with the laws of the State of California regarding conflicts of interest, including but not limited to Government Code section 1090, the Political Reform Act, or other state or federal laws.

7. Termination of Agreement.

d. **Termination by CPA.** Employee is employed at the pleasure of the Board and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

e. **Termination on Resignation.** Employee may terminate the Agreement by giving CPA at least sixty (60) days (or more if possible) prior written notice. CPA may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

f. **Termination on Death.** If Employee dies during the term of this Agreement, this Agreement shall be terminated on the date of Employee’s death. All warrants or checks for accrued salary, accrued vacation or other items shall be released to the person designated in writing by Employee pursuant to Government Code Section 53245 or, if no designation is made, to Employee’s estate.

8. **Severance.** CPA shall pay Employee for all services through the effective date of termination. Employee shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits applicable to all CPA employees generally.

g. If CPA terminates this Agreement (thereby terminating Employee’s employment) without cause, CPA shall (i) pay Employee a lump sum severance benefit equal to six (6) months of Employee’s then applicable base salary; and (ii) pay the premiums for Employee’s health coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) for one (1) calendar year following termination or until Employee secures full-time employment with a new employer offering health coverage, whichever is sooner. In the event of the latter, Employee shall notify CPA within 30 days of any such full-time employment.

h. If CPA terminates this Agreement (thereby terminating Employee’s employment) with cause, Employee shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

   i. A conviction, plea bargain, judgment, or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude, or violation of any statute or law constituting misconduct in office, misuse of public funds, or conflict of interest;

   ii. Conviction of a felony;

   iii. Conviction of a misdemeanor arising out of Employee’s duties under this Agreement and involving a willful or intentional violation of law;
iv. Willful abandonment of duties;

v. A pattern of repeated, willful, and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

vi. Any other action or inaction by Employee that materially and substantially harms CPA’s interests, materially and substantially impedes or disrupts the performance of CPA, or that is detrimental to employee safety or public safety.

i. If Employee terminates this Agreement (thereby terminating Employee’s employment), Employee shall not be entitled to any severance.

j. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the CPA for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

9. Reimbursement to CPA required.

The following limitations apply to CPA’s obligation to Employee pursuant to paragraph 8 above:

k. **Paid Leave.** Pursuant to Government Code Section 53243, in the event the Employee is placed on paid leave pending an investigation, Employee shall reimburse CPA if Employee is subsequently convicted of a crime of moral turpitude or that constitutes “abuse of office or position,” as that is defined by Government Code Section 53242.4;

l. **Legal Defense.** Pursuant to Government Code Section 53243.1, in the event CPA pays for Employee’s legal criminal defense, Employee shall fully reimburse such funds to CPA if Employee is subsequently convicted of a crime of moral turpitude that constitutes “abuse of office or position;”

m. **Severance.** Pursuant to Government Code Section 53243.2, if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from CPA, including any severance paid under Paragraph 8 must be fully reimbursed to CPA if Employee is subsequently convicted of a crime of moral turpitude or that constitutes “abuse of office or position.”


n. **Integration.** Subject to all applicable Government code sections, this Agreement contains the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the Parties before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the Parties.
o. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances it shall nevertheless remain in full force and effect in all other circumstances.

p. **Notices.** Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to CPA shall be addressed to the Secretary of the Board at the CPA’s then principal place of business. Notice to Employee shall be addressed to Employee’s home address, as then shown in CPA’s files.

q. **Agreement is Binding.** This Agreement shall be binding upon and inure to the benefit of CPA, its successors, and assigns, and shall be binding upon Employee, Employee’s administrators, executors, legatees, heirs, and assigns.

r. **Waiver.** The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By_____________________________ Date________________
Julian Gold, Board Chair

By_____________________________ Date________________
Nancy Whang
RESOLUTION NO. 22-12-045

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA TO APPROVE MODIFICATIONS TO THE CPA EMPLOYEE HANDBOOK

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) (“Clean Power Alliance” or “CPA”) was formed on June 27, 2017;

WHEREAS, on August 16, 2018, the Board of Directors (“Board”) adopted and approved Resolution 18-012 approving the original version of the Employee Handbook and on September 5, 2019, adopted and approved Resolution 19-09-017 approving revisions to the Employee Handbook;

WHEREAS, the Employee Handbook is one representation of CPA's desire to be a leader in fair and equitable treatment of employees, to foster an open, collaborative, and dynamic working environment, and to recognize the valuable resource that CPA staff represent;

WHEREAS, the Employee Handbook serves as a guide and provides information about working conditions, benefits, practices, and other policies regarding employment with CPA. The Employee Handbook does not cover all issues regarding employment, and is not intended to be a binding contract;

WHEREAS, the Board intends and desires to have the Employee Handbook reviewed from time to time and to supplement, amend, or rescind any policies or portion of the Employee Handbook as is necessary or beneficial to CPA;

WHEREAS, a revision of the Employee Handbook is now necessary and beneficial to reflect CPA’s current and anticipated operational situation; and,

WHEREAS, the revised Employee Handbook has been presented to the Board and attached to the December 1, 2022 Board Agenda.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA that the revised Employee Handbook, as presented to the Board or in a substantially similar form, is hereby approved effective December 1, 2022, and a copy will be distributed to each CPA employee and any future employees upon hire.
IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved;

APPROVED AND ADOPTED this ____ day of __________ 2022.

________________________________________
Julian Gold, Chair

ATTEST:

________________________________________
Gabriela Monzon, Secretary
Welcome to Clean Power Alliance of Southern California

Dear CPA Employee:

Congratulations on your employment with Clean Power Alliance of Southern California (CPA)! We at CPA share great pride and passion in the work we do, and we’re glad you’re joining us to help advance our mission for the benefit of our customers, our environment, and our communities.

As an employee of CPA, you are our most valuable resource. With your talent and abilities, as well as those of the rest of our team, we plan to continue fostering an open, cooperative and dynamic environment. It is our hope that you find CPA a rewarding place to work.

Information regarding the procedures, practices, policies and benefits of CPA are contained within this handbook and we encourage you to review carefully and become familiar with them. CPA’s policies may change from time to time, and employees are expected to comply with the most current provisions.

If you would like further information or have questions about any of the information outlined in this handbook, please feel free to reach out to me or your Supervisor to discuss.

On behalf of the CPA Board of Directors and staff, I extend a warm welcome to our team!

Sincerely,

Ted Bardacke
Executive Director
Chief Executive Officer
This Handbook supersedes any prior versions of handbooks. If it contains policies or procedures that are inconsistent with other statements of policy or procedure, those in the Handbook will govern unless expressly stated otherwise. The Handbook is not all-inclusive but is intended to provide general information to assist you in the performance of your duties. It is intended to comply with all applicable federal, state, and local laws, which may change from time to time. If any provision of the Handbook conflicts with such laws, the Company CPA will follow applicable law.

The Company CPA may revise, interpret, delete, or add to any policies, procedures, work rules or benefits stated in this Handbook or in any other document at any time, in its sole discretion (other than the at-will policy specified herein). As such, the policies (other than the at-will policy specified herein), procedures and benefits summarized in the Handbook will be reviewed and revised from time to time. If the Handbook does not address a particular policy or procedure, the Company CPA reserves the right to modify the Handbook in the future or provide separate policies and procedures. Written changes to this Handbook will be distributed or posted after they are made. Your input into the review process is important to us, and we encourage you to discuss your any thoughts or questions about the Handbook with Human Resources.

This Handbook contains only guidelines and does not create, and may not be used as evidence of, a contract or guarantee of employment for any definite length of time or as a guarantee or contract for any benefits or working conditions. Rather, all employees are at-will, meaning the employee or the Company CPA may terminate the employment relationship for any reason, at any time, with or without cause or prior notice, unless a written agreement signed by the Chief Executive Officer provides otherwise. Please note the Company CPA also may change the terms and conditions of your employment at any time (other than the at-will policy specified herein), with or without cause and with or without prior notice, all in accordance with applicable law.
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SECTION 1: CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
BACKGROUND

The Clean Power Alliance of Southern California (“CPA”) was formed in 2017 as a Joint Powers Authority (JPA), administering a Community Choice Aggregation (“CCA”) in Southern California. The CPA is governed by the Board of Directors (“Board”) with voting membership consisting of elected officials, and their alternates, from the member agencies who make up the JPA.

A CCA, authorized in California under AB 117 and SB 790, allows local governments, including counties and cities, to purchase wholesale power supplies for resale to their residents and businesses as an alternative to electricity provided by an Investor Owned Utility, which for CPA members is Southern California Edison (“SCE”). Electricity procured to serve customers continues to be delivered over SCE’s transmission and distribution system.

CPA exists to serve the residential and non-residential customers and businesses located within its member communities. CPA’s specific objectives are to provide its customers with a reliable supply of electricity, at competitive electric rates, sourced from a generation portfolio with lower greenhouse gas emissions and higher renewable content than the incumbent utility.

SECTION 2: INTRODUCTION & GENERAL PROVISIONS

A. Introduction. This Employee Handbook (“Handbook”) is intended to serve as a guide to many questions employees may have about their employment with the CPA. It is not intended to cover all issues regarding employment, and it is not intended to be a binding contract.

B. At-Will Employment. CPA employees are generally employed on an at-will basis. Employment at-will means that the employment relationship may be Terminated with or without cause and with or without advance notice at any time by the employee or the CPA. Nothing in this Handbook shall limit the right to Terminate at-will employment. No person manager, supervisor or employee of the CPA has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment other than at-will terms except for exception. Only the Executive Director Chief Executive Officer of the CPA has the authority to make any such agreement shall only be binding if it is in writing and signed by the Executive Director Chief Executive Officer.

C. Applicability to Employees with Separate Agreements. Except where there is an express conflict in terms, the provisions of this Handbook shall apply to each employee who holds a separate employment agreement with the CPA. In the event of such a conflict in terms, the terms of the separate employment agreement will control.

D. Employee Responsibility. This Handbook is designed to acquaint employees with the CPA and provide information about working conditions, employee benefits, and other employment policies. Employees are required to read, understand, and comply with all provisions of this Handbook.
D.E. Amendment and Revision of Handbook. No employee handbook can anticipate every circumstance or question about policy. The need may arise, and the CPACPA reserves the right to revise, supplement, or rescind any policies or portion of the Handbook from time to time as it deems appropriate, in its sole and absolute discretion. Employees will be notified of changes to the Handbook as they occur. The only recognized revisions of these policies are those that are issued in writing by the Executive Director/Chief Executive Officer and if revisions are material or non-administrative, with approval of the Board as appropriate.

E.F. Distribution of Handbook. A copy of this Handbook will be distributed to each CPA employee. Newly hired employees will receive a copy upon hire. An employee with questions about provisions in this Handbook may direct them to the Human Resources manager/Director, Human Resources.

F. Prior Policies. The terms and provisions of this Handbook adopted on September 5, 2019 December 1, 2022 by Resolution of the Board supersedes the prior Handbook adopted on July 10, 2018September 5, 2019 by Resolution. However, in no event shall this Handbook supersede any other prior resolution, policy, rule or regulation that has been adopted by the CPACPA’s Board of Directors.

G. Changes to the Law. When any local, state, or federal ordinance, regulation, or law that is incorporated in the Handbook or upon which the Handbook relies is amended through legislative action or is deemed to have been amended by judicial decision, the Handbook shall be deemed amended in conformance with those amendments.

H. Severability. If any section, subsection, sentence, clause, or phrase of the Handbook is found to be illegal by a court of competent jurisdiction, such findings shall not affect the validity of the remaining portions of the Handbook.

Definitions

A. Applicant. A person who has applied for employment with CPA.

B. Chief Administrative Officer. The person holding the title of Chief Administrative Officer (CAO) of the CPACPA or the Chief Executive Officer’s designee performing the CAO responsibilities.

C. Chief Executive Officer. The Chief Executive Officer of CPA or the Chief Executive Officer’s designee, which shall be the Chief Administrative Officer.


C.E. Date of Hire. The date that an employee was originally hired by the CPACPA. An employee’s date of hire does not change except through termination, layoff, resignation, or retirement.

D.F. Day or Days. Calendar day(s) unless otherwise stated.

E.G. Demotion. The movement of an employee from one position to another position having a lower maximum rate of pay.

H. Director, Human Resources. The Director, Human Resources or a person designated to perform the responsibilities related to human resources is also commonly referred to as Director, People and Culture of the CPA at CPA. In the absence of a staff member who has been assigned the responsibilities of Director, Human Resources, the CAO Chief
Administrative Officer or in the CAO’s absence, the Chief Executive Officer’s designee shall act in that capacity.

F. **Discipline.** The punishment practice or counseling of an employee by written reprimand, demotion, suspension, reduction of pay, termination, or other punitive measures.

G. **Executive Director.** The Executive Director of the CPACPA or the Executive Director’s designee, which designation shall be in writing by the Executive Director.

H. **Exempt Employees.** Employees whose duties and responsibilities allow them to be “exempt” from overtime pay provisions as provided by the Fair Labor Standards Act (“**FLSA**”) and any applicable state wage and hour laws. Exempt employees include those who qualify for the executive, administrative or professional exemptions under California law.

I. **Full-Time Employee.** A regular, budgeted position in which an employee of the CPACPA is regularly scheduled to work at least 40 hours per workweek. Employees in full-time positions are eligible for CPA’s benefit package, subject to terms, conditions, and limitations of each benefit program, plus legally mandated benefits, such as worker’s compensation, and paid sick leave.

J. **Human Resources Manager.** The Human Resources manager of the CPA. In the absence of a staff member who has been assigned the responsibilities of a Human Resources manager the Executive Director shall act in that capacity.

K. **Interns.** Employees gaining supervised practical experience in a professional field. Interns are not eligible for any benefits listed in this Handbook, whether compensated or not, unless otherwise required by law.

L. **Layoff.** The separation of employees from the active work force due to organizational changes, lack of work or funds or to abolishment of a position by the CPACPA Board.

M. **Non-Exempt Employees.** An individual who is not exempt from the overtime provisions of the FLSA, California Labor Code, and Industrial Wage Orders and is, therefore, entitled to overtime pay for all hours worked beyond 40 in a workweek or eight (8) in a work day. Nonexempt employees may be paid on a salary, hourly or other basis.

N. **Part-time Employee.** A regular, budgeted position requiring an employee to work a usual schedule of less than 40 hours per workweek. Employees in part-time positions receive legally mandated benefits and may be eligible for some benefits where expressly specified in this Handbook.

O. **Introductory Period.** All new and rehired employees work in an “introductory” status for the first three (3) months after their date of hire. This Introductory Period gives the Supervisor the opportunity to determine the ability with which the employee performs the employee’s job. It also provides the employee with the opportunity to decide if the employee is satisfied with the position. CPA reserves the right to extend the duration of the Introductory Period when such an extension is determined appropriate in CPA’s sole and absolute discretion. Either CPA or the employee can terminate the employment relationship at any time during or after the Introductory Period, with or without cause and without any advance notice.

P. **Promotion.** The movement of an employee from one position to another position with a higher maximum rate of pay.

Q. **Reduction in Pay.** A temporary or permanent lowering of an employee’s rate of pay.
R. **Rejected/Rejection.** The termination by CPA of a new employee who has not successfully completed the Introductory Period for a position.

S. **Resignation.** The voluntary termination of employment by an employee.

T. **Supervisor.** The individual to whom an employee directly reports designated as the administrative head of the relevant department of the employee within CPA. Typically, this individual will conduct the Introductory and Performance reviews.

U. **Suspension.** The temporary separation from service of an employee, without pay, for disciplinary purposes.

V. **Temporary Employee.** An employee hired with the understanding that their employment will not continue beyond a stated date or beyond completion of a specified project or projects. Temporary employees will generally not be employed for more than six (6) months. Temporary employees are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing by the Executive Director/Chief Executive Officer. An employee will not change from temporary to any other employee status or classification simply because of the length of time spent as a temporary employee. The status of a temporary employee may change only if the employee is notified of the change in writing by Human Resources.

W. **Termination/Terminate.** The permanent separation of an employee from employment with the CPA, with or without cause.

X. **Vacancy.** A position that is unfilled but has been included in the current budget.

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**Equal Employment Opportunity**

1. **Equal Employment Opportunity.** The CPA is an equal employment opportunity employer and will consider all qualified applicants for employment or advancement opportunities without regard to race, religion, creed, color, sex, sexual orientation, actual or perceived gender, gender identity, gender expression, national origin, ancestry, citizenship status, uniformed service member status, marital or domestic partner status, pregnancy or pregnancy-related condition, age, medical condition, genetic information, family medical history, physical disability, mental or intellectual disability, political activity, or perception that an individual has any of these protected characteristics, or because of association with an individual in a protected category or any other consideration made unlawful by federal, state, or local laws. Employment-related decisions will be based on merit, qualifications, and abilities. Equal employment opportunity will be extended to all persons in all aspects of the employer-employee relationship, including recruitment, hiring, training, promotion, transfer, discipline, layoff and termination.

2. **Disabled Applicants and Employees.** CPA has a commitment to ensure equal opportunities for disabled applicants and employees. Every reasonable effort will be made to provide an accessible work environment for such employees and applicants. Employment practices (e.g., hiring, training, testing, transfer, promotion, compensation, benefits, and discharge) will not discriminate unlawfully against disabled applicants or employees. CPA provides employment-related reasonable accommodations to qualified individual with disabilities within the meaning of the California Fair Employment and Housing Act (“FEHA”) and the Americans with Disabilities Act (“ADA”).
1. **Request for accommodation.** An applicant or employee who desires a reasonable accommodation in order to perform essential job functions shall submit a written request to the Human Resources manager/Director, Human Resources identifying in reasonable detail: a) the job-related functions at issue; and b) the desired accommodation(s). Reasonable accommodation may include, but is not limited to job restructuring, reassignment to a vacant position for which the employee is qualified and making facilities accessible.

2. **Reasonable documentation of disability.** Following receipt of the request, a Human Resources manager/Director, Human Resources may require additional information, such as reasonable documentation of the existence of a disability or additional explanation as to the effect of the disability on the individual’s ability to perform the essential job functions, but will not require disclosure of diagnosis or genetic history.

3. **Interactive process.** The CPACPA will engage in the interactive process, as defined by the FEHA and ADA, to determine whether an applicant or employee is able to perform the essential job functions of the position. During this process, CPA will examine potential reasonable accommodations that will make it possible for the employee or applicant to so perform. Such interactive process may include meeting(s) with the employee or applicant, the CPACPA, and, if requested by CPA, the employee or applicant’s health care provider.

4. **Case-by-case determination.** The CPACPA shall determine, in its sole discretion, whether reasonable accommodations(s) can be made, and the type of reasonable accommodations(s) to provide. The CPACPA will not provide an accommodation that would pose an undue hardship upon it or that is not required by law. The CPACPA will inform the employee or applicant of any decisions made under this section in writing.

**Proof of Right to Work**

**A.** Under federal law, all new employees must complete INS Form I-9 and produce original documentation establishing their identity and right to work in the United States. New hires may establish their identity and right to work by:

1. Providing documentation that singularly establishes both their identity and employment authorization (identified “List A” documents on the INS Form I-9), or

2. Providing documentation that separately establishes their identity (“List B” documents on the INS Form I-9) and their employment authorization (“List C” documents on the INS Form I-9).

**B.** Documentation must be produced prior to or on day of commencement of employment with the CPACPA. Required documentation must be presented to the Human—Resources manager/Director, Human Resources, who will be responsible for processing the documents.

**C.** Employees who are re-hired must provide proper documentation if the prior INS Form I-9 has expired or is about to expire. Authorization documents will be copied and placed with the employee’s INS Form I-9 in a file separate from the employee’s personnel file.

**Code of Ethics and Conflicts of Interest**

**A. Code of Ethics.** Employees have an obligation to conduct their work responsibilities within guidelines that prohibit actual or potential conflicts of interest. An employee shall contact the
General Counsel or General Counsel designee with a question regarding the existence of an actual or potential conflict of interest. This Code of Ethics is not intended to supersede or invalidate any statute, resolution, ordinance, or regulation.

1. **Applicability.** This Code of Ethics shall apply to all employees.

2. **Substantive requirements.**
   
   a. All employees shall uphold the Constitution of the United States and the Constitution of the State of California.
   
   b. All employees shall comply with all applicable provisions of California law governing public employees and officials, particularly the California Political Reform Act and its provisions on gifts and conflicts of interest.
   
   c. No employee shall engage in any activity which results in any of the following:
      
      (i) Use of time, facilities, equipment, supplies, or other resources of the CPACPA for the private advantage or gain for oneself or another;
      
      (ii) Use of official information that is not available to the general public for private advantage or gain for oneself or another; and
      
      (iii) Use of the authority of their position with the CPACPA to discourage, restrain, or interfere with any person who chooses to report potential violations of any law or regulation.
   
   d. No employee shall directly or indirectly accept:
      
      (i) Private advantage, remuneration, or reward for oneself or another as a result of the prestige or influence of the office, employment, or appointment the employee holds with the CPACPA;
      
      (ii) Financial consideration from any source other than the CPACPA for the performance of the employee’s official duties; or
      
      (iii) Employment from private interests, when such employment is incompatible with the proper discharge of their official duties or may result in a conflict of interest.
   
   e. No employee shall give special treatment or consideration to any individual or group beyond that available to any other individual or group.
   
   f. No employee shall discriminate against or harass a citizen or co-worker on the basis of race, religion, creed, color, sex, sexual orientation, actual or perceived gender, gender identity, gender expression, national origin, ancestry, citizenship status, uniformed service member status, marital or domestic partner status, pregnancy or pregnancy-related condition, age, medical condition, genetic information, family medical history, physical disability, mental or intellectual disability, political activity, or perception that an individual has any of these protected characteristics, or because of association with an individual in a protected category or any other consideration made unlawful by federal, state, or local laws.
   
   g. All employees shall conduct themselves in a courteous and respectful manner at all times during the performance of their duties.
h. All employees shall complete mandatory Harassment Prevention Training.

3. **Enforcement.** Any employee found to be in violation of this Code of Ethics shall be subjected to appropriate Discipline.

**Outside Employment, Enterprise, or Activity.** No employee may engage in any outside employment, enterprise, or activity that is inconsistent, incompatible, in conflict with, or adverse to the employee’s employment or the employee’s ability to perform the employee’s duties and responsibilities, including performance of overtime work and emergency duties, or any other aspect of CPA operations. Employees are required to make requests for approval for outside employment in writing by completing a required Outside Employment Approval Request form and submitting it to their Supervisor. The form must include all outside employment in which an employee is already engaged or in which they intend to engage, so that CPA may assess whether such outside employment conflicts with the employee’s CPA employment. Regardless of the assessment, all Outside Employment Approval Request forms shall be maintained in the employee’s personnel file.

1. An employee’s outside employment, enterprise, or activity will be prohibited when any of the following are present:
   
a. It involves the receipt or acceptance by the employee of any money or other consideration from anyone other than the CPA for the performance of an act which the employee would be required or expected to render in the regular course or hours of the employee’s employment with the CPA or as part of the employee’s duties as a CPA employee;

b. It involves the use for private gain or advantage of CPA time, facilities, equipment and/or supplies; or the badge, prestige, or influence of the employee’s CPA employment;

c. It involves the performance of an act, in other than the employee’s capacity as a CPA employee, which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee of the CPA; or

d. It involves time or scheduling demands as would render performance of the employee’s duties as a CPA employee less efficient.

2. **Conflict determination.** When a request for approval of outside employment is submitted to the Supervisor, they shall determine whether the employee’s outside employment conflicts with the performance of the employee’s duties and shall advise the employee of that determination in writing.

3. **Appeal of conflict determination.** An employee may appeal the conflict decision to the Executive Director within fourteen (14) Days from the employee’s receipt of the conflict determination by filing a written appeal with the Executive Director. The employee shall specify the grounds on which the employee challenges the conflict decision and shall attach all relevant documentary evidence to the appeal. The Executive Director shall schedule a meeting with the employee to discuss the decision. The Executive Director shall issue a written decision to the employee within
fourteen (14) Days from the date of the meeting. The decision of the Executive Director/Chief Executive Officer shall be final.

4. Disciplinary action. Any employee who fails to act upon notice of a conflict of interest or who fails to file an Outside Employment Request may be subject to disciplinary action up to and including termination.

C. Contracts and Conflicts of Interest. No CPA employee can be financially interested in any contract made by the employee in the employee’s official capacity, or by any board of which the employee is a member.

1. An actual or potential conflict of interest occurs when an employee can influence a decision that may result in a personal gain for that employee or for a member of their immediate family as a result of the CPACPA’s decisions and/or business dealings. For the purposes of this Handbook, immediate family includes persons related by blood or marriage or, whose relationship with the employee is similar to that of persons who are related by blood or marriage.

2. No presumption of conflict is created by the mere existence of a relationship with outside firms. However, if an employee has any influence on transactions involving purchases, contracts, or leases, it is imperative that the employee discloses to employee’s Supervisor as soon as possible the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

3. AB 1234 Ethics training is required for all CPA employees within thirty (30) Days of hire and every two (2) years thereafter. Upon completion of training, a copy of the certificate of completion must be provided to the Human Resources manager/Director, Human Resources. On-line training is offered at www.fpcc.ca.gov. However, other courses may be available. See the Human Resources manager/Director, Human Resources for other options.

4. CPA employees required to complete California Fair Political Practices Commission Form 700 (Statement of Economic Interests) will be designated by the Fair Political Practices Commission (“FPPC”) adopted Conflict of Interest Code for the CPACPA.

D. Conduct During the Workday. During the workday, employees are expected to devote their full time in the performance of their assigned duties. Any approved outside work, part-time job, hobbies, or personal business must be performed during off duty hours. Off duty hours include unpaid lunch break periods, legally-required meal and rest periods, but do not include other rest or break periods during which the employee continues to receive pay.

E. Political Activity. Employees may not engage in political activity during working hours or while on CPA property.

F. Solicitations of Political Contributions. No employee may knowingly, directly or indirectly, solicit a political contribution during working hours, on CPA premises or using CPA property, equipment, or email. For purposes of this section, “contribution” means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

G. Reporting Suspected Misconduct
1. Reporting to CPA. The CPACPA encourages all employees and interested third parties to report alleged misconduct to the Human Resources managerDirector, Human Resources, or to a third party designated by CPA to intake complaints, to ensure that all allegations are thoroughly investigated, and suitable action(s) are taken where appropriate. Corrective action, up to and including termination, will be taken where warranted for employees.

2. External reporting. Reports regarding suspected waste, fraud, and abuse may be directed to a third party designated by CPA to intake complaints, which may be anonymous or to the Public Integrity Division of the Los Angeles County District Attorney’s Office, 320 West Temple Street, Room 766, Los Angeles, California 90012, (213) 974-6501.

3. Confidentiality and anonymous complaints. Reports made to or about the CPACPA regarding suspected misconduct will be treated as confidential information, to the extent possible, and can be communicated anonymously. However, it is important that the reporting individual understand and be aware of the following:

   a. The CPACPA discourages the use of anonymous complaints because anonymity in the complaint procedure may compromise the CPACPA’s ability to complete a thorough investigation.

   b. Should the CPACPA learn of the complaining party’s identity, the CPACPA cannot guarantee that the complaining party’s identity will remain confidential where the CPACPA determines that disclosure of information is necessary to complete the investigation.

4. Protection against retaliation.

   a. Any employee who makes a complaint under this policy or otherwise engages in “whistleblowing” (through internal reporting or reports made to government agencies) is protected against adverse employment actions for raising allegations of misconduct. An employee is protected even if the allegations prove to be incorrect or unsubstantiated when made in good faith.

   b. Employees who participate or assist in an investigation will also be protected.

SECTION 3: EMPLOYMENT STATUS

Introductory Periods

A. Objective of Introductory Period. The Introductory Period shall be regarded as a part of the selection process and shall be used for closely observing the employee’s work, to determine if the employee can successfully perform the assigned duties of the employee’s position and the CPACPA’s rules and policies, and to help ensure the employee effectively adjusts to the employee’s position.

B. Introductory Period. All Full-Time and Part-Time Employee positions shall be subject to an Introductory Period of three (3) months, unless the employee is notified in writing of an extension in accordance with section C of this Section 3.

C. Extension of Introductory Period. Written notice shall be provided as soon as reasonably possible to the employee if an Introductory Period is to be extended. The Introductory Period,
upon approval of the Human Resources manager. Director, Human Resources may be extended by the Executive Director up to a maximum of six (6) months, before expiration of the initial three (3) month period. In addition, the use of any leave of absence in excess of fifteen (15) days shall cause the employee’s Introductory Period to be extended automatically by the length of the leave(s) of absence. Advance written notice that the Introductory Period is being extended and the length of the extension shall be provided to the employee.

D. Rejection of Employee on Introductory Period. During the initial Introductory Period, an employee may be terminated at any time, with or without cause, and with or without advance notice. Notification of Rejection will be served on the employee. The employee will have no right of appeal of the employee’s failure to complete the Introductory Period or of the decision to terminate employment.

E. At-Will Employment. By completing the Introductory Period, an at-will employee is not guaranteed continued employment for any term. The employee will continue to be employed at-will, such that the employment relationship may be Terminated with or without cause and with or without advance notice at any time by the employee or the CPACP.
a. Before expiration of an Introductory Period, the Supervisor will have a discussion review with the employee covering on their work performance (“Introductory Evaluation”). Upon such discussion, a written evaluation will be provided to the employee and signed by both the employee and the Supervisor.

b. An employee may refuse to sign the written evaluation and file a response letter with the Human Resources manager Director, Human Resources within five two (52) business days of receiving the written evaluation.

c. Within ten five (105) business days, the Supervisor will review the response letter and determine whether to adjust the Introductory Evaluation.

d. An employee may file a response letter to the Director of Human Resources within three (3) business days. The response letter will be forwarded to the supervisor of the Supervisor preparing the Introductory Evaluation. The Supervisor’s supervisor Executive Director Supervisor above the Supervisor and/or Human Resources shall make the final determination as to whether each Introductory employee has successfully completed the Introductory Period or has been Rejected from employment. As set forth above, completion of the Introductory Period does not impact an employee’s at-will status.

2. Performance Evaluations. CPA encourages an open dialogue between an employee and the employee’s Supervisor on an informal, regular basis. This interaction increases job satisfaction for the employee and CPA. Formal performance evaluations will be conducted at least annually or with more frequency dependent on the length of service, job position, past performance, change in job duties, or recurring performance problems concerns.

a. Performance evaluations will first consist of a meeting with the employee’s Supervisor. A standard template evaluation form and meeting format will be used. Following the meeting, a formal written evaluation will be prepared by the Supervisor.

b. After the review of the performance evaluation, the employee will be asked to sign the evaluation report to acknowledge that it has been presented to employee and discussed with employee and Supervisor, and that employee is aware of its contents.

c. Employee may decide to not sign the performance evaluation and file a response letter with the Human Resources manager Director, Human Resources within five three two (523) business days of receiving the performance evaluation.

d. Within ten five (405) business days, the Executive Director of the Supervisor performing the evaluation above the Supervisor and/or Human Resources will review the response letter and determine whether to adjust the performance evaluation. The decision of the Executive Director Supervisor’s supervisor above the Supervisor and/or Human Resources shall be final.

C. Relation to Merit Salary Increases. Merit-based pay adjustments may be awarded by the CPA as part of the formal performance evaluation process and in accordance with its salary administration guidelines to recognize employee performance. However, the decision to award such an adjustment is not guaranteed and is instead dependent upon numerous factors,
including the inclusion of funding for such adjustments in the CPACPA Board-approved annual budget, as well as an employee’s performance evaluation.

D. Maintenance of Performance Evaluation. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee. The content of each employee evaluation report is confidential and will not be discussed with or by any person except the employee being evaluated, the employee’s Supervisor, the Human Resources Manager, and/or the Executive Director.

Disciplinary Action

Employees are expected to meet acceptable standards of conduct. Satisfaction of these standards not only promotes productivity and efficiency, but also helps to ensure that all employees will enjoy a pleasant and cooperative work environment. CPA views compliance with these commonsense rules to be an important responsibility of every employee. Consequently, violation of these rules may lead to disciplinary action up to and including termination.

As explained elsewhere in this handbook, employment will continue only at the mutual consent of the employee and the employer. Employment is therefore terminable at will, at any time, either by the employee or by CPA, with or without cause or advance notice. Accordingly, CPA does not adhere to any formal system of discipline. Nevertheless, where CPA determines it to be appropriate in the exercise of its discretion, it may attempt to give an employee a prior written or oral warning and an opportunity to improve or correct an issue of misconduct before termination.

It is impossible to identify every type of possible misconduct, infraction, or performance problem that can result in discipline. The following is therefore simply a partial, non-exhaustive list of types of conduct that may result in disciplinary action, up to and including the possibility of immediate termination.

1. Unexcused and/or repeated tardiness or absenteeism.

2. Mishandling, misappropriation or unauthorized removal or possession of the funds and/or property of CPA and/or any co-worker.

3. Violation of any CPA policy, including policies, described in this handbook, as revised from time to time.

4. Gambling on CPA property or while on duty.

5. Possessing or bringing dangerous or unauthorized materials on CPA property (e.g., guns, knives, or other weapons, hazardous materials or illegal/controlled narcotics or substances).

6. Falsifying or destroying any CPA records, including timekeeping records.

7. Engaging in rude or discourteous conduct toward others.
8. Smoking in any form through the use of tobacco products or “vaping” with e-cigarettes in restricted areas on CPA property. Smoking during working hours is permitted outside of the building on rest breaks and meal periods.

9. Reporting to or being at work while under the influence of alcohol or unlawful drugs or possessing drugs while on CPA’s premises or while on duty or operating a vehicle or potentially dangerous CPA equipment.

10. Falsifying or making erroneous entries or material omissions on an employment application or other CPA record.

SECTION 4: EMPLOYMENT POLICIES & PROCEDURES

Problem Resolution

A. If an employee has a complaint or question about the employee’s job duties, working conditions, or treatment the employee is receiving, the employee is encouraged to take the following steps to address employee’s concerns:

1. Bring the situation to the attention of employee’s Supervisor or the Human Resources managerDirector, Human Resources who will then investigate and provide a solution or explanation.

2. If the problem remains unresolved, the employee may present it in writing to the Executive DirectorChief Executive Officer who will work towards a resolution.

B. This procedure may not result in every problem being resolved to the employee’s satisfaction. However, CPA values the employee’s input and the employee should feel free to raise issues of concern, in good faith, without fear of retaliation.

Policy Prohibiting Harassment, Discrimination, and Retaliation

CPA is committed to providing a work environment that is free of discrimination. In keeping with this commitment, CPA requires all employees to complete mandatory Harassment Prevention training. Additionally, CPA maintains a strict policy prohibiting all forms of unlawful harassment, discrimination, and retaliation, including sexual harassment and harassment based on race, color, religion, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, military and veteran status, sexual orientation, or any other characteristic protected by state or federal law. This policy applies to all employees and prohibits harassment of employees in the workplace by any person, including nonemployees, such as vendors, independent contractors, and third parties doing business with CPA or with whom an employee comes into contact. Furthermore, this policy prohibits unlawful harassment in any form, including verbal, physical and visual harassment. It also prohibits retaliation of any kind against individuals who file complaints in good faith or who assist or participate in an investigation.

Sexual harassment includes, but is not limited to, making unwanted sexual advances and requests for sexual favors where either (1) submission to such conduct is made an explicit or implicit term or condition of employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.
Individuals who violate this policy are subject to Discipline up to and including the possibility of immediate termination.

Unlawful sexual harassment may take many forms, including:

- Verbal conduct, such as epithets, derogatory comments, slurs, or unwanted sexual advances, invitations or comments.
- Visual conduct, such as derogatory posters, cartoons, drawings or gestures.
- Physical conduct, such as assault, blocking normal movement, or interference with work directed at an employee because of the employee’s sex or other protected characteristic.
- Threats and demands to submit to sexual requests in order to keep one’s job or avoid some other loss and offers of job benefits in return for sexual favors.
- Retaliation for having reported unlawful harassment.

Any employee or other person who believes they have been harassed by a co-worker, Supervisor, manager, agent, of CPA or a nonemployee should promptly report the facts of the incident(s) and the names of the individuals involved to the employee’s Supervisor, the Human Resources manager, or to a third party designated by CPA to intake complaints, which may be anonymous. It is the responsibility of each employee, independent contractor or other person to immediately report any violation or suspected violation of this policy to one or more of the individuals identified above.

Supervisors should immediately report any incidents of alleged harassment to the Human Resources manager. The Human Resources manager will promptly investigate all such claims and take appropriate corrective action, including appropriate options for remedial actions and resolutions, such as possible disciplinary action, when it is warranted. A complaint will be designated as confidential, to the extent possible, but cannot be kept completely confidential. It will lead to a fair, impartial, thorough and timely investigation by qualified individuals, documentation and tracking for reasonable progress and timely closure based on the evidence collected.

Employees should feel free to report claims and participate in any investigation without fear of retaliation of any kind. Employees will not be subject to retaliation for registering a complaint of unlawful harassment, retaliation or discrimination.

If any employee has questions concerning this policy, please feel free to contact the Director, Human Resources. Employees should also be aware that the Federal Equal Employment Opportunity Commission (“EEOC”) and various state agencies (e.g., in California, the California Civil Rights Department) investigate and prosecute complaints of prohibited harassment, discrimination and retaliation in employment. If you think you have been harassed or discriminated against or that you have been retaliated against for resisting, complaining or participating in an investigation, you may file a complaint with the appropriate agency. The nearest EEOC office can be found by visiting the agency website at https://www.eeoc.gov/. Individual sites may also have agency websites that can be found online (e.g., in California, visit https://calcivilrights.ca.gov/). Otherwise, the EEOC will have regional offices to serve your area.

Consensual Romantic Relationships between Employees

A. General. Consensual romantic or sexual relationships between CPA employees can lead to misunderstandings, complaints of favoritism, adverse effects on employee morale, and possible
claims of sexual harassment during or after termination of the relationship. As a result, such relationships present existing or potential conflicts that adversely affect efficient operation of the CPACPA. Relationships that present an actual conflict under this section are therefore prohibited.

1. **Application.** This section shall apply to all CPA employees, regardless of gender or sexual orientation, who have a romantic or sexual relationship with another CPA employee.

2. **Definition of Conflict.** For purposes of this section, a conflict exists if business issues of supervision, safety, security, and/or morale would be impacted by a romantic or sexual relationship between two employees or between an employee and Intern.

3. **Duty to Report.** If a romantic or sexual relationship exists between employees and, in particular, between a Supervisor and a subordinate, the more senior employee/Supervisor shall promptly disclose the relationship to the Executive Director/Chief Executive Officer and request a determination as to whether the relationship presents a conflict. The disclosure must identify the names and positions of both employees. An employee’s failure to comply with this section shall be grounds for Discipline up to and including Termination.

4. **Determination by the Executive Director/Chief Executive Officer.** Within five (5) business days, the Executive Director/Chief Executive Officer shall issue a written determination as to whether the relationship presents a conflict and is thereby prohibited. The Executive Director/Chief Executive Officer, in consultation with a Human Resources manager/Director, Human Resources, shall have sole discretion in making the determination.

5. **Resolution of Conflicts.** Subject to limitations imposed by applicable provisions of this section, the Executive Director/Chief Executive Officer will attempt in good faith to work with the Supervisor and the other employee to consider options to eliminate the conflict, including removing the Supervisor’s authority that created the conflict, reassignment, transfer or voluntary demotion of the Supervisor, or where the Executive Director/Chief Executive Officer determines that modification of a Supervisor’s assignment is not feasible, reassignment, transfer or voluntary demotion of a non-supervisory employee. The Executive Director/Chief Executive Officer retains discretion to determine how the conflict shall be resolved, including potential resignation or termination.

6. **Prohibited On-duty Conduct.** All CPA employees are prohibited from engaging in intimate, physical, or other conduct in furtherance of a romantic or sexual relationship with another CPA employee or any other person at work locations or at any time during work hours. Moreover, upon termination of a sexual or romantic relationship with another CPA employee, employees are prohibited from engaging in behavior that adversely affects the working conditions of any CPA employee. In general, all employees are expected to observe appropriate standards of workplace conduct in their interactions with other CPA employees.

7. **Complaints.** Employees who believe that they have been adversely affected by romantic or sexual relationships between CPA employees should address their concerns to their Supervisor or the Human Resources manager/Director, Human Resources.
8. CPA desires to avoid misunderstandings, complaints of favoritism, claims of sexual harassment, and employee dissension that may result from personal or social relationships amongst employees. Therefore, if an employee becomes involved in a romantic relationship with another employee that employee should disclose that relationship to the employee’s Supervisor or to the Director, Human Services manager. This information will be kept as confidential as possible. For purposes of this provision, a “romantic relationship” will be interpreted broadly. CPA reserves the right to take necessary and appropriate action to resolve any potential conflict of interest arising out of a romantic relationship between or among employees. Depending on the facts of the situation, such action may include reassignment or termination of one or both employees involved.

Media Contact

CPA has established protocols and procedures for dealing with inquiries from outside sources, including any representative of the press or media. The only individuals authorized to communicate with any outside source, including any press or media representative, is the Executive Director/Chief Executive Officer and/or the Executive Director/Chief Executive Officer’s designee.

Employees must refrain from answering any questions or providing any information, in written or verbal form, to any representative of the press or media. This includes both on and off the record statements. Violations of this policy are extremely serious and may result in disciplinary action, including the possibility of immediate termination.

Employment of Close Relatives

The employment of close relatives in the same area of an organization may cause conflicts of interest and appearances of impropriety. In addition, personal conflicts may impact the working relationship of the parties. Although CPA does not prohibit the hiring of close relatives of existing employees, CPA is committed to monitoring situations in which close relatives work in the same area. In the event of an actual or potential problem, CPA’s response may include reassignment or termination of one or both individuals involved. CPA reserves the right to apply this policy to situations where there is a conflict or the potential for conflict because of the relationship between employees, even if no direct reporting relationship or authority is involved. In these situations, CPA will reassign one of the employees within 60 days.

Any exceptions to this policy must be approved by the department director and HR Employee’s supervisor and Director, Human Resources. Written justification for the exception must be submitted to HR Director, Human Resources prior to any employment decisions.

SECTION 5: OFFICE HOURS & TIMEKEEPING

Hours of Work

A. Full-Time employees are generally required to provide adequate office coverage during office hours. The office is open Monday – Friday, 8:30 a.m. to 5:30 p.m. (Pacific time). Work schedules will be determined by the employee’s Supervisor. Full-Time employees shall work a standard work schedule, eight (8) hours per day, exclusive of their one-hour meal period. However, because of the nature of CPA’s work, Exempt Employees may be required to work evenings and occasional weekends depending on various factors, such as workloads, operational efficiency, and staffing needs. In such cases, flexible work schedules will be
approved by the Executive DirectorChief Executive Officer or the employee’s Supervisor, taking into consideration the employee’s work demands. CPA reserves the right to assign employees to jobs other than their usual assignments when required.

B. Staffing needs and operational demands may necessitate variations in starting and ending times, as well as variations in the total hours that may be scheduled each day and week.

C. Part-time employees will be advised in writing of their expected schedule prior to beginning work and must report to work promptly. Any modifications to Part-Time employees’ daily hours will be documented in writing.

D. Meal Periods and Rest Breaks

CPA provides meal and rest breaks in accordance with applicable state and federal law. California Employees are authorized to and permitted to take a 10-minute paid rest break for every four hours worked, or major fraction thereof.

Whenever practicable, Non-Exempt employees should take their rest breaks near the middle of each four-hour work period. Employees may not accumulate rest breaks or use rest breaks as a basis for starting work late, leaving work early, or extending a meal period. Employees will be relieved of all of their duties during rest breaks but may not leave the work premises during a rest break. Because rest breaks are paid, employees should not clock out for them. CPA will not retaliate against any employee who reports that their supervisor or manager caused them to miss or take a late rest break.

CPA also provides and makes available an unpaid meal period of at least 30 minutes to Non-exempt Employees in California who work more than five (5) hours in a workday (the “First Meal Break”). CPA provides a second unpaid meal period of at least 30 minutes to employees who work more than 10 hours in a workday (the “Second Meal Break”). Employees may only waive their First Meal Break if they work no more than six (6) hours and elect in writing to waive the First Meal Break or have signed a Meal Break Waiver Form. Employees may only waive their Second Meal Break if they work no more than 12 hours total, they have taken their First Meal Break, and elect in writing to waive the Second Meal Break or have signed a Meal Break Waiver Form. Unless waived, employees must begin their First Meal Break before the end of their fifth hour of work (at or before four hours and 59 minutes (4:59) after starting work). Unless waived, employees must begin their Second Meal Break before the end of their tenth hour of work (at or before nine hours and 59 minutes (9:59) after starting work). CPA does not pay Non-Exempt employees for their First or Second Meal Break, and, consequently, employees must record the start and stop times of their First and Second Meal Breaks using the appropriate time-recording procedure. Meal periods cannot be taken at the beginning or end of shifts. First and Second Meal Breaks cannot be less than 30 minutes in duration. Employees are not allowed to perform any work during their meal breaks and may not work “off the clock.” Employees will be relieved of all of their duties during meal periods and are allowed to leave the building. To the extent any tasks must be completed during an employee’s required 30-minute meal break, the employee must designate a coworker to complete any such task or, alternatively, may choose to have no appointments scheduled that would interfere with the taking of a meal break.

If for any reason an employee is not provided a meal period or rest break in accordance with this policy, or if an employee is in any way discouraged or impeded from taking their meal period or rest break or from taking the full amount of time allotted to them, the employee should immediately notify Human Resources.
**Timekeeping**

A. Time records, including time sheets, represent legal documents that are used to accurately record working time and to compensate employees properly. Accurately recording time worked is the responsibility of every employee. Federal and state laws require the employer to keep an accurate record of hours worked in order to calculate employee pay and benefits. Hours worked include all time spent on the job performing assigned duties.

1. All employees must submit signed or electronically approved bi-monthly timesheets showing hours worked each day. Timesheets must be submitted three (3) business day prior to the end of each pay period.

2. An employee’s tampering, altering, or falsifying time records may result in disciplinary action, up to and including termination. Under no circumstances shall a Supervisor or employee submit a time sheet on behalf of another employee or perform work off the clock.

3. It is the employee’s responsibility to submit the employee’s time record to certify the accuracy of all time recorded. In doing so, the employee shall attest that the time and hours recorded accurately and fully identify all time worked during the pay period, whether authorized or unauthorized, and that all meal periods to which the employee is entitled have been provided. If all meal periods have not been provided, employees will be required to report to [their Supervisor] and document the reason for the missed meal period.

B. Supervisors will review and approve the time record for each employee before submitting it for payroll processing. In support of that obligation, Supervisors are responsible for monitoring each employee under their direct supervision.

C. Time sheets shall be retained as required under CPA’s record retention policies and as required by California law.

D. Lactation Breaks

1. In accordance with California and federal law, employees who wish to express breast milk while at work may request the opportunity to do so. Efforts will be made to accommodate eligible employees by allowing them to express breast milk in a private area. Where an employee has a private office, it may be used for that purpose. Employees can exercise this privilege during their regular rest periods when possible. If it is not possible to exercise this privilege during a regular rest period, employees can arrange with their Supervisor to take additional time or express breast milk at a different time. The time will be paid when employees use their regular rest periods to express breast milk.

2. For purposes of this policy, a “private area” is a place other than a bathroom that is near the employee’s work area and that is shielded from view and free from intrusion by other Employees and the public and preferably with a lock. Such space will meet the requirements of state law, including having a surface to place a breast pump and personal items, a place to sit, access to electricity, a sink with running water, and a refrigerator for storing breast milk.

3. Human Resources Manager, Human Resources will consider input from the affected employee but retains sole discretion in identifying a “private area” on a case-by-case basis.
4. An employee may request an accommodation for lactation breaks by submitting a lactation accommodation request form to their Supervisor. The Supervisor must respond to the employee’s accommodation request in writing on the same lactation accommodation request form submitted by the employee indicating the approval or denial of the break request. The completed request form must be returned to the employee and a copy sent to Human Resources. CPA reserves the right to deny, in writing, an employee’s request for lactation break if the additional break time will seriously disrupt operations.

5. Employees have the right to file a complaint with the California Labor Commissioner for any violation of rights provided under California law regarding lactation accommodations.

E. Overtime

CPA provides compensation for all overtime worked by Non-Exempt employees in accordance with applicable state and federal law. For California Non-Exempt employees, all hours worked in excess of eight (8) hours in one workday or forty (40) hours in one (1) work week will be treated as overtime. Compensation for hours worked in excess of eight (8) hours in a workday and the first eight (8) hours on the seventh (7th) consecutive workday will be compensated at one and one-half times (1.5) the employee’s regular rate of pay. Compensation for hours worked in excess of twelve (12) hours in a workday and in excess of eight (8) hours on the seventh (7th) consecutive workday, will be paid at double the regular rate of pay.

For the purposes of calculating overtime, CPA holidays and vacation days are not counted as “time worked” and CPA’s workweek is Sunday 12:00 a.m. through Saturday 11:59 p.m. Any employee who is eligible to receive holiday pay and who works on a holiday observed by CPA shall be paid at their regular rate of pay for any work performed consistent with the relevant state and federal law. Regular overtime rules apply for hours worked on holidays observed by CPA.

All overtime must be approved by the employee’s immediate supervisor or the Human Resources Manager. Failure to obtain overtime approval in advance may result in disciplinary action.

Exempt employees may have to work hours beyond their normal schedules, as work demand requires. No overtime compensation will be paid to exempt employees. Rather, exempt employees are paid a pre-determined salary that is intended to fully compensate them for all hours worked. As a general rule, an exempt employee’s gross salary is not subject to pay changes due to actual number of hours worked in a pay period. However, when an exempt employee has exhausted all accrued vacation days and misses additional full days off work for personal reasons, deductions will be made consistent with all applicable state and federal laws.

F. Holidays

Regular Full-Time Position employees will receive the following paid holidays:

- New Year’s Day (January 1)
• Martin Luther King, Jr. Day (third Monday in January)
• President’s Day (third Monday in February)
• Cesar Chavez Day (March 31)
• Memorial Day (last Monday in May)
• Juneteenth (June 19)
• Independence Day (July 4)
• Labor Day (first Monday in September)
• Veteran’s Day (November 11)
• Thanksgiving (fourth Thursday in November)
• Day after Thanksgiving
• Christmas Eve (December 24)
• Christmas (December 25)
• New Year’s Eve (December 31)

CPA’s office is closed December 25 through January 1. Exempt employees can complete essential duties remotely with no charge to their vacation time, but non-exempt employees should not be performing any work without pay. Essential duties may include but are not limited to checking and responding to email, completing required tasks, (e.g., work necessary to meet a legal or regulatory deadline), and responding to urgent issues that may arise. During this time, the employees committed to performing essential duties will not be required to use their vacation time off, as addressed in Section 6. Employees that do not want to perform essential duties must be approved to take leave during this time. Employees on a hybrid work schedule will not be required to report to the office.

If a holiday falls on a Saturday or Sunday, it will be observed on the preceding Friday or the following Monday. Holiday observance will be announced in advance.

**SECTION 6: LEAVE**

**Vacation**

A. Vacation time off with pay is available to eligible employees to provide opportunities for rest, relaxation, and personal pursuits. Employees are encouraged to use their available vacation each year, in accordance with this section. Vacation time may be used in minimum increments of one (1) hour.

B. Full-Time Position employees accrue vacation leave at the rate of 8 hours for 120 hours of vacation annually upon beginning of employment. Full-time employees are eligible for additional vacation award upon the beginning of the employee’s years of service as noted below, with allocation of vacation time which shall be prorated according to an employee’s start date through the end of the fiscal year. Vacation time shall be accrued per pay period on a pro-rata basis. Upon the completion of three (3) continuous years of service, employees will be granted an additional 40 hours (1 week) of vacation leave annually. The Executive Director/Chief Executive Officer, in the Executive
Director Chief Executive Officer’s sole discretion, may grant an additional three week 
40 hours immediately upon hire for the purposes of recruitment.

2nd year  40 additional hours
4th year  40 additional hours
6th year  40 additional hours

The Chief Executive Officer may grant an additional 40 hours immediately upon hire for the purposes of recruitment in lieu of the 2nd year increase in number of awarded hours.

Employee may accrue have a vacation balance up to a limit of 1.5 two (2) times the annual accrual allotment. Once employee reaches the maximum accrual limit the employee will not receive any additional vacation time until the accrued balance falls below the maximum limit. “Cash-out” of vacation leave is not permitted. An annual cash out of up to 80 hours is permitted. CPA will designate certain times of the year when the cash-out option can be exercised. Annual vacation balances may not fall below 120 hours as a result of an employee exercising the cash-out option.

B.C.

Full vacation balances are available at the beginning of each fiscal year of employment, with allocation of vacation time prorated according to employees’ start dates. Vacation time shall be accrued per pay period on a pro-rata basis. If employment terminates, employees will be required to pay back any vacation time that was used but not accrued during the fiscal year through a deduction in the employee’s final paycheck. When an employee chooses to take vacation in advance of being accrued, the employee consents to having the used, but not accrued, vacation pay deducted from their final paycheck.

C.D. Employees may only request vacation time up to the available balance in their vacation bank. If an employee has a zero balance in their vacation bank, time off must be preapproved by the Human Resources Manager and shall be unpaid.

D.E. Employees do not accrue are not eligible for receiving additional vacation time while they are on an unpaid leave of absence.

E.F. Employees must obtain the written approval of their Supervisor before commencing their vacation. Approval should be requested at least two (2) weeks in advance of the date the vacation is expected to begin. Although efforts will be made to accommodate an employee’s request to take vacation at the time requested, Supervisors must consider the needs of CPA when evaluating requests. CPA reserves the right to decline an employee’s request to take a vacation at a particular time if it would be disruptive or inconvenient to CPA to grant the request.

E.G. Where two (2) or more employees file timely requests to take vacation during the same period and CPA is unable to grant each request, CPA will ordinarily grant the request of the employee with the longest period of service unless business reasons exist to deviate from that standard.

G.H. Employees shall be compensated for their remaining accrued vacation leave balance upon separation from employment.

Paid Sick Leave
A. In General

1. CPA complies with the requirements of all state and local paid sick leaves. Although this paid sick leave policy is intended to comply with the requirements of all state and local paid sick leave laws, some jurisdictions may have specific requirements not outlined in this policy. Please contact Human Resources with questions regarding your eligibility and entitlement to paid sick leave.

1.2. Sick leave may be used for an absence due to illness or injury sustained by the employee, or an immediate family member residing with the employee, for the following reasons: (1) diagnosis, care or treatment of an existing health condition for an employee or covered family member (as defined below); (2) preventive care for an employee or an employee’s covered family member; or (3) for certain, specified purposes when the employee is a victim of domestic violence, sexual assault or stalking. Sick leave may be used in minimum increments of one (1) hour.

3. For purposes of paid sick leave, a covered family member includes children (biological, adopted, or foster child; stepchild; legal ward of the child of a worker standing in loco parentis to the child); parents; grandchildren; grandparents; spouses; registered domestic partners; parents of a domestic partner; siblings; any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship; and a “designated person” (a person identified by the employee at the time the employee requests paid sick leave, and limited to one designated person per 12-month period).

2.4. All Full-Time Position employees shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

3.5. All Part-Time Position employees anticipated to work more than 30 calendar days shall accrue paid sick leave benefits at the rate of one hour for each 30 hours worked. Accrued sick leave will be carried over each year but will be capped at 48-72 hours.

4.6. Sick leave will accrue during any paid leave of absence, but not during an unpaid leave of absence. If an employee uses all accrued sick leave, but needs additional time off from work, the additional time may be allowed but the leave will be unpaid.

5.7. Unused sick leave has no cash value upon separation from employment. Employees who are rehired within one (1) year of separation from employment may be eligible for reinstatement of previously accrued and unused paid sick leave.

6.8. Employees may only take sick leave up to the available balance in their sick leave bank. If an employee has a zero balance in their sick leave bank, time off must be preapproved by the Human Resources Manager and shall be unpaid.

B. Reporting Absence Because of Illness or Injury

Any employee who is unable to report to work due to an illness or injury must notify the employee’s Supervisor or other designated person by telephone or other means of communication prior to the scheduled reporting time for work on the first day of absence unless emergency conditions make it not practicable under the circumstances to do so, as determined by the responsible Supervisor, in which case notice must be provided as soon as practicable. The Supervisor should also be contacted.
each additional day of absence for absences lasting three (3) or fewer consecutive days. Should an employee’s absence extend beyond three (3) consecutive workdays for medical illness or injury, a doctor’s release must be obtained and given to the Supervisor as soon as possible and prior to the employee’s return to work. The Supervisor must provide the doctor’s release to the Human Resources manager/Director, Human Resources and the release must be placed in the employee’s personnel file.

C. Absenteeism and Sick Pay

Employees should not automatically assume that absenteeism is permissible merely because they have enough sick pay benefits available to cover all or a portion of their time off. CPA may determine that absenteeism is excessive if, based on all the facts and circumstances it is found disruptive to CPA, co-workers, or the public. Each case must be evaluated based on the surrounding facts and circumstances by the Executive Director/Chief Executive Officer or the Executive Director/Chief Executive Officer’s designee. Absenteeism that is determined to be excessive may lead to disciplinary action up to and including the possibility of immediate termination.

Personal Time Off

In addition to vacation, 40 hours of personal time off (PTO) is available to all Exempt employees after completion of the employee’s Introductory Period. Full PTO balances are available at the beginning of each fiscal year of employment, with allocation of PTO time prorated according to employees’ start dates.

All PTO must be preapproved by and prescheduled with the employee’s Supervisor and may be taken in hourly increments. Approval for all scheduled time away is subject to applicable workloads. Unused PTO time may not be carried over from one fiscal year to the next.

Employees will not be able to “sell” or “cash-out” unused PTO hours. If you terminate your employment or if you are terminated, you will be paid for all unused PTO time.

Pregnancy Disability Leave

A. Eligibility: Under the California Fair Employment and Housing Act (“FEHA”), employees who are disabled by pregnancy, childbirth or related medical conditions are eligible to take a pregnancy disability leave (“PDL”) and to request reasonable accommodation. Employees who are affected by pregnancy or a related medical condition are also eligible to transfer to a less strenuous or hazardous position or to less strenuous or hazardous duties, if such a transfer is medically advisable.

B. Leave Entitlement: Employees will be eligible to take unpaid Pregnancy Disability Leave (“PDL”) for any period or periods of actual disability caused by an employee’s pregnancy, childbirth or related medical conditions for up to four (4) months (the working days an employee normally would work in one-third of a year or 17.33 weeks) per pregnancy. The employee will be returned to the same job when the employee is no longer disabled by pregnancy or, in certain instances, to a comparable job. For a Full-Time Employee who works 40 hours per week, “four
months” is 693 hours of leave entitlement based on 40 hours per week times 17.33 weeks. However, a pregnancy-disabled employee who exhausts the employee’s four (4) months of PDL may also be entitled to additional leave under the FEHA, as a reasonable accommodation for a disability.

C. Usage: PDL does not need to be taken in one continuous period of time but can be taken on an as-needed basis. Time off needed for prenatal care, severe morning sickness, doctor-ordered bed rest, childbirth, and recovery from childbirth would all be covered by PDL. At the employee’s option, the employee can use any accrued vacation or other accrued time off as part of the employee’s PDL before taking the remainder of the employee’s leave as unpaid leave. CPA may require that the employee use up any available sick leave during the employee’s leave. The employee may also be eligible for state disability insurance for the unpaid portion of the employee’s leave.

D. Benefits: CPA will maintain and pay for group health benefits during the employee’s PDL as if the employee was actively working during the leave, up to a maximum of four months within a 12-month period (commencing on the date the PDL begins). If employees take their full PDL and their full California Family Rights Act (“CFRA”) leave for baby bonding, CPA will maintain health coverage for up to seven months (see below for more details on CFRA).

Family Medical Leave Act and California Family Rights Act

A. Permissible Purposes of FMLA/CFRA: An eligible employee may request a family and medical leave of up to 12 weeks for any of the following reasons. The federal Family and Medical Leave Act (“FMLA”) and the California Family Rights Act (“CFRA”) provide eligible employees the opportunity to take unpaid, job-protected leave for certain specified reasons. FMLA and/or CFRA leave may be taken for any of the following reasons:

1. the birth of the employee’s child;
2. the placement of a child with the employee in connection with an adoption or foster care;
3. to care for a family member (employee’s spouse, parent, registered domestic partner (CFRA only), child or registered domestic partner’s child, grandparent (CFRA only), grandchild (CFRA only) or sibling (CFRA only)) or “designated person” (CFRA only, and defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship”) — child, parent, domestic partner, or spouse who has a serious health condition;
4. due to a serious health condition that prevents the employee from performing one or more of the essential functions of the employee’s position; or
5. because of a qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operations defined under FMLA/CFRA arising from the “covered active duty” as a member of the military reserves, National Guard or Armed Forces of a spouse, registered domestic partner (CFRA only), child, child of a registered domestic partner (CFRA only), or parent.
(6) Military caregiver leave for a service member with a serious health condition who is the employee’s spouse, domestic partner, child, parent or next of kin.

Incapacity due to pregnancy, prenatal medical care or childbirth is FMLA covered leave but does not count toward CRA leave. Please see the Pregnancy Disability Leave policy for further information on this type of leave.

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty may request a leave of up to 26 weeks in a single 12-month period to care for the servicemember.

To the maximum extent permitted by law, any leave of absence that is granted to an employee under this policy or any other policy for a purpose specified above shall be credited against the applicable 12-week or 26-week limit contained in this policy.

B. Length of Leave: If the reason for leave is common to both FMLA and CFRA, and, therefore, running concurrently, the maximum amount of FMLA/CFRA leave will be 12 workweeks in any 12-month period (with the exception of military caregiver leave). If the reason for leave is not common to both FMLA and CFRA and, therefore, not running concurrently, then an eligible employee may be entitled to additional leave under applicable law.

When the reason for leave is bonding leave or family care leave under FMLA and both spouses work for CPA and are eligible for leave under this policy, the spouses will be limited to a total of 12 workweeks off between he two (2) of them under FMLA. However, CPA will not limit the employees’ entitlement to CFRA for any qualifying reason.

The maximum amount of FMLA leave for an employee wishing to take military caregiver leave will be a combined leave total of 26 workweeks in a single 12-month period, which begins on the date of the employee’s first use of such leave and ends 12 months after that date.

C. Eligible Employees: An employee’s eligibility is determined from the date the Family Medical Leave Act (“FMLA”) and/or the California Family Rights Act of 1992 (“CFRA”) FMLA and/or CFRA leave is scheduled to begin, not the date of notice. An employee can request FMLA and/or CFRA leave before meeting the eligibility requirement as long as eligibility is met by the first day of leave. Under FMLA and CFRA an eligible employee is one who meets the following criteria:

1. Has completed an aggregate of 12 months of CPA service in the preceding seven (7) years, which need not be consecutive; and

2. Has worked at least 1,250 hours during the 12-month period immediately preceding the first day of leave; and-

2.3 Currently works at a location where there are at least 50 employees within 75 mils (FMLA only).

C. Identifying the 12-Month Period: CPA measures the period of 12 months in which leave is taken beginning with the first day of the employee uses FMLA and/or CFRA leave and starts their “leave year” if the employee is taking leave on a continuous basis. In cases of intermittent leave, the “leave year” is established by the certification date, even if the employee does not immediately have FMLA and/or CFRA absences. In addition, FMLA/CFRA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the child’s birth or placement.
D. Notification Responsibilities: When leave is foreseeable (e.g. expected date of birth or planned medical treatment), the employee must provide notice at least thirty (30) days’ notice before FMLA and/or CFRA leave is to begin. If thirty (30) days’ notice is not possible, due to lack of knowledge or an emergency, notice must be given as soon as possible absent extenuating circumstances.

An employee must consult with that employee’s Supervisor and make a reasonable effort to schedule the leave to not unduly disrupt the CPA’s operation when planning intermittent leave for medical treatment for the employee or the employee’s family member. Employees are expected to consult with their Supervisor prior to the scheduling of treatment in order to work out a schedule which best suits the needs of both the department and the employee. If an employee neglects to consult with the Supervisor, the Supervisor may initiate discussions with the employee and require the employee to attempt to make such arrangements.

It is the Human Resources manager’s responsibility to designate FMLA and/or CFRA leave. However, it is the employee’s obligation to provide the Human Resources manager with sufficient information to allow the Human Resources manager to make the designation.

D. FMLA/CFRA Leave Entitlement: The FMLA and CFRA allow an eligible employee to take a maximum of 12 workweeks of unpaid leave in one 12-month period for one or more FMLA and/or CFRA qualifying reasons. The 12-month period begins with the first day the employee uses FMLA and/or CFRA leave and starts their “leave year” if the employee is taking leave on a continuous basis. In cases of intermittent leave, the “leave year” is established by the certification date even if the employee does not immediately have FMLA and/or CFRA absences. Each time an employee takes FMLA and/or CFRA leave, it is subtracted from an employee’s leave entitlement of 12 workweeks. If more than one qualifying reason for leave occurs within the leave year, the employee is only entitled to a total of 12 workweeks for all FMLA and/or CFRA qualifying reasons. FMLA runs concurrently with PDL, but CFRA leave does not. CFRA leave begins when PDL ends. This means that an eligible employee can take additional leave under CFRA for baby bonding once the employee exhausts the entitlement to PDL. CFRA covers care of a newborn and placement of a child for adoption or foster care.

E. Certification by Health Care Provider: If an employee requests a leave due to a serious health condition of the employee or a family member, the employee must support the request with a certification issued by the health care provider of the individual with the serious health condition. The certification should include the following information:

1. the date, if known, on which the serious health condition commenced;
2. the probable duration of the condition;
3. an estimate of the amount of time that the health care provider believes that the employee needs to care for the individual requiring the care; and
4. a statement that the serious health condition warrants participation of a family member to provide care during a period of treatment or supervision of the individual requiring care (if applicable).

If an employee requests intermittent leave for planned medical treatment, the certification should specify the dates on which such treatment is expected to be given and the duration of such treatment. If the time estimated by the health care provider under (3) above expires, the employee must submit a recertification if the employee desires additional leave. In addition,
extensions will not be granted that cause the total period of the leave to exceed the applicable 12-week or 26-week limitation identified above.

F. **Employee Status:** Employees will retain their employee status during the period of a family and medical leave. Moreover, their absence shall not be considered a break in service for purposes of determining their longevity or seniority. Once an employee returns from a leave, the employee will be credited with all seniority and service accrued before the leave of absence began. However, the employee will not accrue seniority during the leave.

G. **Reemployment Privileges:** Except where the law authorizes a different result, an employee who complies with the provisions of this policy will be guaranteed reemployment upon expiration of an approved leave, provided that the total period of the leave does not exceed 12 weeks or, in the case of a leave to care for a covered servicemember, 26 weeks. The employee will be reemployed in the same or an equivalent position as that which the employee occupied when the leave began. Upon returning from FMLA/CFRA leave, employees will typically be restored to their original position or to an equivalent position with equivalent pay, benefits and other employment terms and conditions. An employee who takes a leave of absence because of an employee’s own serious health condition must provide a medical certification verifying that the employee is able to return to work in the same manner as employees who return to work from other types of medical leave. If an employee fails to return to work immediately after the period of the approved leave expires, the employee will be considered to have voluntarily separated from CPA as scheduled after FMLA/CFRA leave or if an employee exceeds the 12-week FMLA/CFRA entitlement, the employee will be subject to CPA’s other applicable leave of absence, accommodation and attendance policies. This may result in termination if the employee has no other CPA-approved leave available that applies to the continued absence. Likewise, following the conclusion of the FMLA/CFRA leave, CPA’s obligation to maintain the employee’s group health plan benefits ends (subject to any applicable COBRA rights).

**Other State Family Medical Leaves (Non-California Employees)**

In addition to FMLA, CPA complies with the requirements of all state family and medical leave laws. If you are an employee outside of California, please contact Human Resources with questions regarding your entitlement to family and medical leave under state law.

**Paid Parental Leave**

In an effort to give parents additional flexibility and time to bond with a new child, CPA will provide up to eight (8) twelve (12) weeks of fully Paid Parental Leave to eligible employees at their regular rate of pay in connection with the birth of an employee’s child or the placement of an adopted or foster child within an employee’s home. Paid Parental leave is not designed to work in conjunction with California’s State Disability and/or Paid Family Leave (“PFL”) benefits. The employee should not apply for State Disability and/or PFL wage replacement benefits during an employee’s Paid Parental Leave.

A. **Eligibility**

To be eligible under this policy, the employee must have been employed by CPA for at least six months successfully completed their introductory evaluation period, and meet one of the following criteria:

- Have given birth to a child; or
• Be a spouse or committed partner of a woman who has given birth to a child either as the intended mother or via surrogate; or
• Have adopted or fostered a child or been placed with a foster child who is 17 years old or younger; but this does not apply to the adoption of a stepchild by a stepparent.

Parental Leave described in this policy shall be available for a 12-month period following the birth or adoption, or fostering of a child. Employees may extend the 12-week paid leave period by taking unpaid time off or by using accrued vacation. Employees may elect to apply for State Disability and/or PFL wage replacement benefits after the 12-week paid leave period expires and may elect to supplement offset the payments received under these programs by using vacation to receive 100% of the employee’s salary; however, the fact of multiple births, or adoptions, or foster placements does not increase the length of Parental Leave. This leave runs concurrently to FMLA and/or CFRA leave as applicable, as well as any other applicable state family medical leave.

B. Coordination With State Disability and/or Paid Family Leave Overpayments

The employee must apply for and upon receipt of State Disability and/or PFL wage replacement benefits, as applicable, during an employee’s leave, the State of California will provide the employee with a portion of the employee’s base wages. During Paid Parental Leave, CPA will pay 100% of the employee’s salary for up to eight (8) weeks; however, this pay may coordinate with California State Disability and/or PFL benefits, as applicable. CPA will pay the remaining portion of the employee’s base wages, so that the employee will receive 100% of the employee’s salary during that 8-week period. CPA will issue the employee paychecks and/or direct deposits for the full amount of the employee’s wages as part of the regularly scheduled payroll during the employee’s leave period. However, if the employee has been awarded PFL wage replacement benefits, the wages CPA will pay in full during the Parental Leave period will result in an overpayment. To resolve any overpayment(s) created by receipt of PFL benefits, employees must remit copies of all statements for PFL benefits received from the State to CPA within thirty (30) days of receipt. CPA will deduct the amount of the overpayment from the employees next paycheck.

C. Leave Notice

Employees shall notify the Human Resources manager of the need for Parental Leave and include the estimated timing and duration of such leave at least sixty (60) calendar days in advance of the need for leave, where practical. If the need for leave under this policy is not foreseeable, employees must give notice of the leave to their Supervisor as soon as practical.

Bereavement Leave

A. All employees shall be entitled to three (3) days paid leave and an additional two (2) days of unpaid leave in the event of a death in the immediate Family of a qualifying family member of the employee. The immediate family shall be defined as Qualifying family members include:

1. Parents
2. Siblings/siblings-in-law
3. Grandparents
4. Mother-In-Law/Father-In-Law/Parents-in-law
5. Spouse or registered domestic partner
6. Children
6.7. Grandchildren
7.8. Any other person whose association with the employee is similar to “immediate family,” with advance approval of the Executive Director, Chief Executive Officer or Human Resources manager, Director, Human Resources.

B. The five (5) days do not need to be taken consecutively; they can be intermittent. However, the employee must complete the bereavement leave within three (3) months of the family member’s date of death.

C. An employee must provide reasonable notice to the employee’s Supervisor of the intent to use bereavement leave.

D. CPA may require that the employee provide documentation of the death of the family member, including a death certificate, published obituary, or written verification of death, burial, or memorial services. The documentation, if requested, must be provided within 30 days of the first day of bereavement leave. The request for leave and any related documentation will be maintained as confidential, and only disclosed as required by law.

E. Employees may use available sick or vacation leave for bereavement purposes in addition to the paid leave provided under this section.

**Jury Duty and Witness Leave**

A. CPA encourages employees to fulfill their civic responsibilities by serving jury duty when required or to be a witness in a legal proceeding. **Full-Time and Part-Time Employees may request paid jury duty leave. For Non-Exempt employees, jury duty pay will be calculated on the employee’s regular pay rate times the number of hours the employee would otherwise have worked on the day of absence. It is the policy of CPA to pay a maximum of 40 hours for jury duty service. However, should it be deemed necessary to serve beyond the maximum number of paid days, the employee should notify the Executive Director, Human Resources in advance who may exercise the option of extending the number of paid hours. For Non-Exempt employees, jury duty pay will be calculated on the employee’s regular pay rate times the number of hours the employee would otherwise have worked on the day of absence. Exempt employees will also receive full pay while serving up to five (5) days of jury duty, however, should that time extend further, Exempt employees’ salaries will not be docked reduced for jury duty, except for weeks in which they perform no work for CPA.**

B. Employees must show the jury duty or witness summons/subpoena to their Supervisor as soon as possible so that the Supervisor may plan to accommodate the employee’s absence. The employee is expected to report for work whenever the court schedule permits. Upon completion of such service, the employee must furnish a Certificate to CPA from the court showing dates served and amount of compensation paid. Failure to provide CPA with a certificate from the court will be treated as an unpaid absence from work. **Employees may retain any mileage allowance or other fee paid by the court for jury services.**
C. Either CPA or the employee may request that the court excuse an employee from jury duty if, in CPA’s judgment, the employee’s absence would create serious operational difficulties.

**Workers’ Compensation**

In accordance with state law, CPA provides insurance coverage for employees in case of a work-related injury. CPA or its insurance carrier may not be liable for the payment of workers’ compensation benefits for any injury which arises out of an employee’s voluntary participation in any off-duty recreational, social, or athletic activity that is not part of the employee’s work-related duties. To ensure that employee receives any workers’ compensation benefits to which employee may be entitled, employee will need to:

1. Immediately report any work-related injury to employee’s Supervisor.
2. Seek medical treatment and follow-up care if required.
3. Complete a written Employee’s Claim Form (DWC Form 1) and return it to employee’s Supervisor.
4. Provide CPA with certification from employee’s health care provider regarding the need for workers’ compensation disability leave and/or the employee’s ability to return to work from the leave.

**Other Leave**

**A. Family School Partnership Leave**

In accordance with Labor Code Section 230.7, upon reasonable advance written notice to an employee’s Supervisor, an employee who is the parent or guardian of a pupil may take time off to appear in the school of that pupil pursuant to a request made under Education Code Section 48900.1.

**B. Family School Partnership Leave (School or Day-Care Related Activities)**

1. In accordance with Labor Code Section 230.8, upon reasonable advance written notice to an employee’s Supervisor, an employee who is the parent, guardian, or grandparent of a child who is in kindergarten, grades one through twelve, inclusive, or attending a licensed day care facility, is entitled to take unpaid leave to participate in activities of that child’s school or licensed day care facility.

2. Employees are eligible for forty (40) hours of unpaid leave per year for family school leave and may not exceed eight (8) hours in any calendar month. The total amount of leave is per employee and is not conditioned on the number of children, grandchildren, or wards that the employee may have. Upon return to work, the employee must provide the employee’s Supervisor with reasonable written evidence that the employee participated in the school or day care activity at a specific date and time.

3. Any employee who takes family school leave must use any available vacation or other appropriate paid leave for the period of the absence. However, if an Exempt Employee does not have paid leave benefits available to cover some or all of the period of the absence, the employee’s salary shall not be affected.

**C. Domestic Violence/Sexual Assault/Serious or Violent Crime Leave**
1. Leave for Victims of Domestic Violence of Sexual Assault

   a. In accordance with Labor Code Sections 230(c) and 230.1, and upon reasonable advance written notice to the Human Resources manager/ Director, Human Resources if feasible, an employee who is the victim of domestic violence or sexual assault may take time off to obtain a temporary restraining order, a restraining order, or other injunctive relief from court to help ensure the health, safety, or welfare of the employee or employee’s child; for the employee to seek medical attention for injuries caused by domestic violence or sexual assault; for the employee to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault; for the employee to obtain psychological counseling related to an experience of domestic violence or sexual assault; or for the employee to participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation.

   b. If advance notice is not feasible, within a reasonable period following return to work, the employee must submit certification to the Human Resources manager/ Director, Human Resources in the form of one of the following: a police report indicating that the employee was a victim of domestic violence or sexual assault; a court order protecting or separating the employee from the perpetrator of an act of domestic violence or sexual assault, or other evidence from the court or prosecuting attorney that the employee has appeared in court; or documentation from a medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence or sexual assault.

   c. An employee absent under this Handbook may elect to take any accrued paid leaves that are otherwise available to the employee.

2. Leave to Attend Court Proceedings for Victims of Serious or Violent Crime

   a. In accordance with Labor Code Section 230.2, upon reasonable advance written notice to Human Resources of a scheduled proceeding, if feasible, an employee who is the victim of, or is related to a victim of, or is the registered domestic partner of a victim of a serious or violent crime, may take unpaid time off to attend a court proceeding related to that crime. The employee must be the parent, child, spouse, registered domestic partner, child of a registered domestic partner, stepchild, brother, stepbrother, sister, stepsister, stepmother, or stepfather of the victim.

   b. If advance notice is not feasible, within a reasonable period following return to work, the employee must submit certification to the Human Resources manager/ Director, Human Resources evidencing the judicial proceeding from one of the following entities: the court or government agency setting the hearing; the district attorney or prosecuting attorney’s office; or the victim/witness office that is advocating on behalf of the victim.

   c. An employee absent under this Handbook may elect to take any accrued paid leaves that are otherwise available to the employee.

3. Leave for Crime Victim to Participate as a Witness in a Judicial Proceeding
a. In accordance with Labor Code Section 230(b), an employee who is a victim of a crime, may take time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

b. An employee absent under this section may elect to take any accrued paid leaves that are otherwise available to the employee.

D. Leave for Volunteer Firefighters, Reserve Police Officers and Emergency Rescue Personnel

1. Leave for Emergency Duty: In accordance with Labor Code Section 230.3, an employee may take time off to perform emergency duty as a volunteer firefighter, reserve police officer, or emergency rescue personnel.

2. Leave for Training: In accordance with Labor Code Section 230.4, an employee who is a volunteer firefighter, reserve police officer, or emergency rescue personnel may take up to 14 days of unpaid leave per calendar year for the purpose of engaging in fire or law enforcement training.

E. Civil Air Patrol Leave

Employees who volunteer as part of the California Wing of the civilian auxiliary of the United States Air Force (known as “Civil Air Patrol”) may be entitled to an unpaid leave of absence to respond to certain emergency situations. Eligible employees may take up to 10 days per calendar year of unpaid Civil Air Patrol Leave to respond to an emergency operational mission of the California Wing of the Civil Air Patrol. Leave is limited to three (3) days on any one occasion but may be extended if authorized by the government entity that called for the mission and if CPA agrees. This leave is not applicable to employees who are required to respond to emergency operational missions as a first responder or disaster services worker for a local, state or federal agency.

To be eligible for leave under this policy, the employee must have been employed by CPA for at least 90 days immediately preceding commencement of the leave. An employee is required to provide CPA with as much notice as possible of the intended leave dates. CPA may require an employee to submit certification from the Civil Air Patrol to verify his or her eligibility.

During this leave, employees may elect to substitute vacation benefits if available. Upon expiration of this leave, an employee is entitled to reinstatement to the same or an equivalent position, consistent with applicable law.

F. Military & Military Spousal Leave

Military Leave shall be provided as set forth in the applicable California and federal law. An employee entitled to military leave shall give the employee’s Supervisor, in consultation with Human Resources, an opportunity within the limits of military regulations to determine when such leave shall be taken. Prior to taking military leave, an employee, when possible, shall present a copy of the employee’s military orders to the employee’s Supervisor. The Supervisor shall advise Human Resources of the military orders immediately. Copies of the military orders shall be provided to the Human Resources manager and placed in the employees personnel file.
An employee whose spouse or registered domestic partner is deployed for active military service during a period of military conflict is permitted unpaid time off up to ten (10) days to spend with the spouse or registered domestic partner when that spouse or partner is on leave from such deployment. Employees requesting leave must notify their Supervisor of their intention to take time off within two (2) business days of receiving official notice that the employee’s spouse or domestic partner will be on leave from military deployment.

F. Organ and Bone Marrow Donation Leave

Employees who have been employed at least ninety (90) days may request a paid leave of absence of up to thirty (30) business days in a one-year period to donate an organ to another person, or up to five (5) business days in a one-year period to donate bone marrow. An additional unpaid leave of up to 30 business days in a one-year period may be granted to an employee donating an organ. The one-year period is 12 consecutive months measured from the date the employee’s leave begins. Employees must support the request for leave with written verification that the organ or bone marrow donation is required by medical necessity. Employees must use earned sick or vacation leave benefits during the leave of absence. CPA may require an employee taking bone marrow leave to use up to five (5) days of accrued sick or vacation days for this leave, and an employee taking organ donation leave to use up to two (2) weeks of accrued sick or vacation days for this leave.

G. Voting Leave

Employees who are unable to vote during non-work hours may arrange in advance to take up to two (2) hours off, with pay, to vote in a public election. In order to qualify, employees must obtain advance approval from their Supervisor.

H. Alcohol and Drug Rehabilitation Leave

CPA will make reasonable accommodations by providing unpaid time off for any employee who voluntarily enters and participates in a drug or alcohol rehabilitation program, if it does not impose an undue hardship. Employees may use accrued sick leave during this period. CPA may also allow employees to use accrued vacation leave or other paid time off. The duration of the time off is tied to the duration of the program.

This type of time off may also be covered by the Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA) if the employee is otherwise eligible and has a serious health condition. If so, CPA will follow the approval and medical certification process under FMLA/CFRA and inform the employee that the time off is designated as FMLA/CFRA time. The two leave obligations may run concurrently.

CPA will make reasonable efforts to maintain the confidentiality of the employee’s treatment to the extent possible. The Company—CPA is not obligated to continue to employ any person whose performance of essential job duties is impaired because of drug, alcohol or marijuana use. Additionally, employees who are given the opportunity to seek treatment and/or rehabilitation, but fail to successfully overcome their dependency, will not automatically be reemployed or given a second opportunity to seek treatment and/or rehabilitation. This policy on treatment and rehabilitation is not intended to affect the CPA’s treatment of employees who violate the...
regulations described previously. Rather, rehabilitation is an option for an employee who acknowledges a chemical dependency and voluntarily seeks treatment to end that dependency.

I. Literacy Education Assistance

CPA will make reasonable accommodations by providing unpaid time off for any employee in an adult literacy education program, if it does not impose an undue hardship. CPA will comply with the Employee Literacy Education Assistance Act and reasonably accommodate an employee who reveals a literacy problem and requests assistance to enroll in an adult literacy education program.

CPA requires that employees provide proof of enrollment in an adult literacy education program and will take reasonable steps to keep the employee’s literacy problem confidential. CPA may also allow employees to use accrued vacation leave.

J. Other Leave Policies (Outside of California)

Employees working in states outside of California may be eligible for additional leave benefits. Please see Human Resources for additional information.

Personal Leaves of Absence Without Pay

A. Request for a Personal Leave of Absence Without Pay. When an employee has exhausted all the employee’s paid leaves, the employee may request a leave of absence without pay in accordance with this Section. The employee must submit a written request to the employee’s Supervisor for a leave of absence without pay, along with any supporting documentation. The Supervisor must forward the request, along with any supporting documentation to Human Resources managerDirector, Human Resources for consideration by the Executive DirectorChief Executive Officer.

B. Authority to Grant a Personal Leave of Absence Without Pay. The Executive DirectorChief Executive Officer may grant a regular or probationary employee leave of absence without pay for a period not to exceed three (3) months. After three months, the leave of absence may be extended by an additional three (3) months if the employee submits a further written request, along with supporting documentation, that is authorized by the Executive DirectorChief Executive Officer. The approval or rejection of the Executive DirectorChief Executive Officer will be in writing and may be communicated by Human Resources on behalf of the Executive DirectorChief Executive Officer. An employee may not be granted more than six months of a leave of absence without pay.

C. Return from Personal Leave of Absence Without Pay. Upon expiration of a regularly approved leave, the employee will be reinstated in the position held at the time leave was granted, provided such position continues to exist. An employee on leave who fails to report to duty promptly at its expiration will be subject to disciplinary action for being on an unauthorized absence. An employee who is absent for medical reasons may be required to demonstrate fitness for duty in accordance with the CPACPA’s fitness for duty policy.

D. Mandatory Exhaustion of Paid Leaves. If an employee is requesting a leave of absence for medical reasons, the employee is required to first fully exhaust all the employee’s paid leaves in order to be eligible to receive a leave of absence without pay. If an employee is requesting a leave of absence for personal reasons, the employee is required to fully exhaust all the employee’s paid leaves, except sick leave, in order to be eligible to receive a leave of absence without pay.

Punctuality and Unauthorized Absences
A. Punctual and regular attendance is an essential responsibility of each employee at CPA. Employees are expected to report to work as scheduled, on time and prepared to start working. Employees are also expected to remain at work for their entire work schedule. Late arrival, early departure or other absences from scheduled hours are disruptive and must be avoided. Excessive tardiness and/or absenteeism will result in disciplinary action, up to and including termination. This policy does not apply to absences covered by the FMLA, CFRA or leave provided as a reasonable accommodation under the Americans with Disabilities Act (“ADA”) or any other form of approved or protected leave.

A.B. When an employee has been absent without authorization from work for more than three (3) workdays, and in the opinion of the Supervisor the employee has abandoned the employee’s position, the Supervisor shall notify the Human Resources Manager/Director, Human Resources. The Human Resources Manager/Director, Human Resources shall notify the employee that the CPA has determined the employee has abandoned the employee’s position and that the employee has seven (7) working days upon receipt of the notice to contact the CPA regarding the employee’s intent to return to work. The notice shall also advise the employee that failure to contact the CPA within the seven-day period shall be deemed an automatic Resignation effective on the eighth day. Such notice shall be in writing and sent by certified mail or personal service to the last address listed in the employee’s personnel records.

B.C. Abandonment of position may include, but is not limited to:

1. Where an employee fails to return to the employee’s position upon conclusion of any authorized leave of absence;
2. Where an employee fails to properly notify by telephone or in writing the employee’s immediate Supervisor of absence due to sickness or injury;
3. Where an employee fails to appear for work without notification or express agreement between the Supervisor and the employee as to the use of any leave time set forth in this Handbook;
4. Where an employee fails to keep the employee’s immediate Supervisor reasonably apprised of disability status; or
5. Where an employee fails to respond within seven (7) business days to the notice of abandonment of position.

C. Abandonment of position shall constitute a Resignation from CPA service.

SECTION 7: EMPLOYMENT RECORDS

Access to Personnel Files and Payroll Records

A. General provisions

1. CPA maintains a personnel file on each employee. The personnel file may include such information as the employee’s job application, resume, records of training, documentation of performance appraisals and salary increases, and other employment records.
2. Personnel files are the property of CPA and shall be maintained by the employer in strict confidence. Access to the information contained therein is restricted, except as permitted by law. Only Supervisors and management personnel of the CPA who
have express authorization from the Executive Director Chief Executive Officer and a legitimate reason to review information in a file can do so without being subject to the procedures set forth in this Section.

3. As provided by law, letters of reference, recruitment files, and reports regarding ongoing investigations concerning a current or former employee shall be excluded from the provisions of this Section. In addition, names of all non-supervisory employees shall be redacted from records to be provided under this Section.

B. Inspection of a Current or Former Employee’s Personnel File

1. A current or former employee wishing to inspect the employee’s personnel file or payroll records must submit a written request to the Human Resources manager Director, Human Resources. Proof of identity will be required to inspect personnel or payroll records for the employee’s file. The Human Resources manager Director, Human Resources shall issue a written notice setting a date for the inspection of said records within thirty (30) days of receipt of the request, to take place during normal business hours. With the requesting person’s written consent, the date for inspection may be extended on one occasion by up to five (5) Days. If the requesting person is a former employee who was terminated for violation of CPA’s policy or law involving harassment or workplace violence, CPA shall have discretion to mail a copy of the personnel file at the CPACPA’s expense instead of scheduling an in-person inspection.

2. A current employee may inspect the employee’s records at the place the employee reports to work or may instead consent to inspect the employee’s personnel file in the Human Resources manager Director, Human Resources’s office without loss of compensation. Inspection by former employees and authorized representatives shall take place with the Human Resources manager Director, Human Resources unless otherwise mutually agreed in writing by the CPACPA and may require additional reasonable proof of identity.

3. A Human Resources manager Director, Human Resources or other authorized employee must be present throughout the inspection. No personnel files or contents of personnel files shall be removed from the place of inspection without advance written authorization from the Executive Director Chief Executive Officer.

C. Obtaining Copies of a Current or Former Employee’s Personnel File

1. A current or former employee wishing to obtain copies of documents or other materials in the employee’s personnel file in person or by mail must submit a written request to the Human Resources manager Director, Human Resources along with reasonable proof of identity. A current or former employee who seeks to authorize another person to obtain copies of the employee’s personnel file must provide a satisfactory written authorization along with the written request. Reasonable proof of identity may be required at the time of in-person pick up of requested documents.

2. The Human Resources manager Director, Human Resources shall issue a written notice setting a date on which the requested copies may be picked up in person during the normal business hours of the CPACPA and identifying the cost of reproduction that must be paid to the CPACPA at the time of pick up. The date for in-person pick up of the documents shall be no more than thirty (30) days after receipt of the request in Human Resources. With the requesting person’s written consent, that date may be extended on one (1) occasion by up to five (5) calendar days. If the requesting person
is a former employee who was terminated for violation of CPA Handbook or law involving harassment or workplace violence, the Human Resources manager, Human Resources shall have discretion to mail a copy of the personnel file at the expense of the CPACPA instead of scheduling an in-person pick up.

3. If the requesting person chooses delivery by mail instead of in-person pick up, the notice provided by Human Resources shall also identify the additional actual postage expenses for which the requesting person must reimburse CPA prior to receipt of the copies.

D. Obtaining Copies of a Current or Former Employee’s Payroll Records

A current or former employee, by oral or written request, may request to receive and/or review a copy of their wage statements. Such request will be fulfilled by CPA within a reasonable period of time, but no later than 21 days of the request. Employees requesting copies will be charged the actual cost of reproduction.

Personnel Data Changes

It is the responsibility of each employee to promptly notify CPA of any changes in personnel data. Employees must ensure that personal mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishments, and other pertinent information, are always accurate and current.

Employment Verification and References

It is the CPACPA policy that the Executive Director, Chief Executive Officer or the Human Resources manager, Human Resources are authorized to respond to requests for verification of employment from financial institutions, etc. No other Supervisor or employee is authorized to provide employment verification for current or former employees.

The CPACPA relies upon the accuracy of information contained in the data presented throughout the hiring and employment process. Any misrepresentations, falsifications, or material omissions in any of this information or data may result in exclusion of the individual from further consideration for employment or, if the individual has been hired, Termination of employment.

To help to ensure that individuals who join CPA are well qualified and have a strong potential to be productive and successful, it shall be the policy of the CPACPA to check employment references of prospective employees.

Additionally, CPA will provide references upon written request concerning any present or past employment at CPA. Human Resources may respond with confirmation of dates of employment and position held. If authorized by the employee in writing, CPA will also provide information on the amount of salary or wages earned by the employee. All responses from CPA will be made in writing.

SECTION 8: GENERAL WORKPLACE RULES

Safety

Establishment and maintenance of a safe work environment is the shared responsibility of the CPACPA and employees from all levels of the organization. Employees are expected to obey safety
rules and to exercise caution in all their work activities. Employees are strongly encouraged to immediately report any unsafe conditions to their Supervisor. Employees at all levels of the organization are expected to correct unsafe conditions within their control as promptly as possible.

Employees who violate safety standards, who cause hazardous or dangerous situations, or who fail to report, or where appropriate, remedy such situations, may be subject to disciplinary action, up to and including Termination of employment.

All accidents that result in injury must be reported to the appropriate Supervisor, regardless of how insignificant the injury may appear. Such reports are necessary to comply with laws and initiate insurance and workers compensation benefits procedures, where applicable.

**Business Use of Personal Vehicles**

A. In general, employees may be required to use their private vehicles to carry out their regular job responsibilities. For this use, employees must comply with California law. Such employees are subject to the provisions of this Section.

B. Use of Cell Phones While Driving

   1. Cell phone use should be avoided whenever it might create an unsafe driving situation. In accordance with California law, it is against the CPACPA’s policy to use a handheld cellular phone while operating a motor vehicle. Employees making or receiving cell phone calls while driving are required to use a hands-free device.

   2. In accordance with California law, text-based communication while driving is prohibited. Specifically, writing, sending, or reading text-based communication including text messaging, instant messaging, and e-mail, on a wireless device or cell phone while driving is prohibited.

   3. Failure to follow the provisions of this Handbook, or any policy, may result in disciplinary action, up to and including termination.

C. Driving Responsibilities.

   Individuals who seek or hold positions that involve driving on CPA business are in roles for which CPA may have direct or indirect legal responsibility. CPA is committed to making certain that employees who have driving responsibilities do not place CPA, employees, or members of the general public at risk.

   In keeping with this policy, CPA requires that employees with driving responsibilities maintain safe driving records as a condition of employment and continued employment. Individuals who fail to maintain such driving records may become unsuitable for their positions. In such cases, CPA reserves the right to discipline or terminate employees with driving responsibilities whose driving records become unsatisfactory, in the sole discretion of CPA.

   In order to verify an individual’s driving status, CPA may require the employees or job applicants to furnish all or portions of their driving record from the Department of Motor Vehicles or may ask them to sign any necessary authorizations that are required or appropriate to request records directly from the Department of Motor Vehicles. Subject to any limitations imposed by state or federal law, individuals must cooperate fully with any request for records or request for an authorization to seek such records from an appropriate agency or entity.
CPA Property and Equipment

A. Use of Property and Property Issued in General

1. Employees are prohibited from being on CPA property or using its facilities or property while not on duty, or for personal use at any time.

2. Work equipment, tools, and materials are provided by the CPACPA to its employees for the sole purpose of performing work-related tasks. Work tools are the property of the CPACPA, and it is the responsibility of the employee to use and maintain them appropriately. Deliberate carelessness or misuse of CPA’s property, or use without authorization, will not be tolerated and may result in disciplinary action being taken against the employee, up to and including termination. Lost or misplaced property that has been issued to an employee must be reported immediately to the employee’s Supervisor.

3. CPA will issue laptops and business cell phones to employees upon request by the employee and approved by the Supervisor and Human Resources manager.

   a. Employees who use cell phones, whether personal or CPA-issued, are expected to confine the use of any personal calls in a way that should not disrupt others, occur during meetings, or interrupt work processes.

   b. Employees who use electronic devices to conduct company business should be mindful that the CPACPA is a public agency and as such is subject to public records requests. Communications related to the conducting of public business using a personal device or account may result in employee’s device/account information being subject to public disclosure.

4. Upon Resignation or the Termination of employment, or at any other time the CPACPA so requests, employees are required to return all items and property issued to them.

5. To the extent permitted by law, the CPACPA reserves the right to charge employees the replacement value of any lost, misplaced, stolen, or deliberately or carelessly damaged CPA property.

B. Cybersecurity

The policy of CPA is to ensure that all information existing in a computerized form is properly safeguarded and that the automated processing involved in the collection, creation, manipulation, storage, retrieval, transmission, and display of information is similarly protected, both in a manner appropriate to the value of the information to the facility and its potential for unauthorized access, destruction, disclosure, or modification.

Any unauthorized acts against CPA’s Communications Systems may result in disciplinary action, up to and including dismissal. Each employee, therefore, must adhere strictly to the specific security measures and internal controls that are established for safeguarding the integrity and validity of a very valuable CPA asset.

CPA Communications Systems hardware, and any data collected, downloaded, and/or created or CPA Communications Systems described above are the exclusive property of CPA and may not be copied, shared, accessed, or transmitted to any outside party without prior written management approval or used for any purpose not directly related to the business of CPA.
Employees should not use a password, access a file, or retrieve any stored communication without authorization. Private information should not be kept on electronic communications systems. Any unauthorized access or use of CPA’s computer or other communication systems is strictly prohibited.

C. Electronic Systems and Privacy

Storage areas, work areas, the contents of electronic and conventional files, other CPA documents, file cabinets, credenzas, computer systems and software, office telephones, cellular telephones, any and all electronically issued technology, modems, facsimile machines, copy and scanner machines, tools, equipment, desks, voice mail, and electronic mail are the property of CPA, and need to be maintained according to CPA rules and regulations.

To safeguard and protect the proprietary, confidential and business-sensitive information of CPA, and to ensure that the use of all electronic systems and equipment is consistent with CPA’s legitimate business interests, authorized representatives of CPA may monitor the use of such systems from time to time without notice, which may include printing and reading materials, files on the system, list servers, and equipment.

Employees should be aware that e-mail messages, like CPA correspondence, and any and all messages sent electronically may be read by other CPA employees and outsiders under certain circumstances. While it is impossible to list all of the circumstances, some examples are the following: (1) during system maintenance of the e-mail system, (2) when CPA has business needs to access the employee’s mailbox, (3) when CPA receives a legal request that requires disclosure of e-mail messages, or (4) when CPA has reason to believe the employee is using e-mail in violation of CPA adopted policies or this Handbook. Employees shall use a designated CPA email account for all work-related email communication and should have no expectation of privacy. Employees should assume that their CPA email account may be accessed, forwarded, read or heard by someone other than the intended recipient, even if marked as “private.”

Telecommuting

Telecommuting allows employees to work at home, on the road or in a satellite location for all or part of their workweek. CPA considers telecommuting to be a viable, flexible work option when both the employee and the job are suited to such an arrangement. Most CPA employees have the option of telecommuting. Telecommuting is not an entitlement and it in no way changes the terms and conditions of employment with CPA. CPA reserves the right to modify or terminate these options at any time. All work options (including changes) must be approved by an employee’s supervisor and/or Human Resources in writing. Please contact Human Resources for additional information.

SECTION 9: LICENSE, MEMBERSHIPS, TRAINING & CONFERENCES

The CPA encourages the continued development of its professional, technical and managerial employees through participation in organizations that are directly relevant to the primary business of the agency. It also recognizes the value of business publications in keeping employees informed of advances and trends in their specific career discipline and areas of responsibility.

A. Licenses/Memberships. The CPA will sponsor memberships and professional licenses where they are likely to be used in the employee’s performance of their duties subject to availability of funds and approval of the Executive Director/Chief Executive Officer.
B. **Conferences/Training.** Employees may request attendance at professional conferences or training which will benefit the CPACPA and enhance the performance of the employee’s job responsibilities. Participation should be for the benefit of the CPACPA and directly related to the job requirements of the employee. All efforts should be made to attend a conference/training which is offered locally or on-line. Training or conference attendance must be approved in advance by the Executive Director/Chief Executive Officer. If a Certificate of Completion is provided, a copy must be provided to Human Resources manager/Director, Human Resources. All mandatory training required by the CPACPA including but not limited to AB 1234 training, sexual harassment, and workplace violence prevention will be provided by or through the CPACPA.

C. **Travel.** Travel for official company business is an important part of the CPACPA. All trips outside of the greater Los Angeles and Ventura metropolitan area will be made with approval of the Supervisor. Employees are expected to exercise good financial judgment when traveling. GSA rates are provided via hyperlink [https://www.gsa.gov/travel/plan-book/per-diem-rates](https://www.gsa.gov/travel/plan-book/per-diem-rates) to the travel request form to ensure employees are aware of acceptable expenses.

A request for travel must be completed and approved by the Executive Director/Chief Executive Officer prior to the travel. Unapproved travel expenses may not be reimbursed.

Airfare should be booked at coach/economy class or the lowest fare available. Ground transportation arrangements should be at reduced rates where available and in all cases at reasonable prices. Employees are expected to use less costly ground transportation where it exists (i.e. public transportation if feasible, shared airport shuttles, standard cabs). Should a rental car be necessary, employees are required to rent compact vehicles unless there is a justification for a higher size. Any travel exceeding the requirement of this section must be justified and approved by the employee’s Supervisor.

Meal expenses incurred by an employee for CPA business purposes will be reimbursed at the current per diem rates published by the Internal Revenue Service. Employees shall retain original receipts for actual expenses, which may be subject to an inspection and/or audit by the Human Resources Manager/Director, Human Resources for a one-year period. Employees will not be reimbursed for alcohol purchase, or meal and lodging expenses in excess of Internal Revenue Service per diem rates except as approved by the Human Resources Manager/Director, Human Resources in consultation with the Executive Director/Chief Executive Officer.

Employees should submit their completed expense report along with required receipts within two weeks after completion of travel. Reports that do not include required receipts will be denied reimbursement.

D. **Miscellaneous Expenses**

1. Expenses incurred for CPA business purposes, including, but not limited to small office supply or equipment purchases are reimbursable, with the approval of the Executive Director/Chief Executive Officer or the Executive Director/Chief Executive Officer’s designee where the expense is reasonable and necessary and supported by an expense reimbursement form including explanations and receipts.

   a. Requests for reimbursement for miscellaneous expenses should be submitted monthly or when the total expenses total $50 or greater, whichever comes sooner.

2. Local meal expenses
a. Local meal expenses out of the office should be claimed infrequently and must be justified in terms of CPA benefit and are permitted only when authorized by the Executive Director/Chief Executive Officer.

b. A written request to host an in-office meeting with food and attended by non-CPA personnel must be approved in advance by the Executive Director/Chief Executive Officer or the Executive Director/Chief Executive Officer’s designee and must include a list of expected attendees.

c. In the event an CPA hosted meeting with food is provided, the request for reimbursement must verify the following:
   - That CPA business was discussed at the meeting;
   - That at least one (1) attendee was non-CPA personnel; and
   - The names and titles of the actual attendees.

3. Reimbursement can be requested for food provided in-house in situations where work is required for completing CPA business and when it is impractical or difficult for staff to obtain their own meals. The Executive Director/Chief Executive Officer or the Executive—Director/Chief Executive Officer’s designee must approve such expenditures in advance.

SECTION 10: PAY

Paydays
All employees are paid bi-monthly (the 15th and last day of each month). Each paycheck will include earnings for the current pay period.

If the regularly scheduled payday falls on a day off, weekend or a holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

Employees may have pay directly deposited into their bank account(s) if they provide advance written authorization to the Human Resources manager/Director, Human Resources. Employees will receive an itemized statement of wages when the CPACPA makes direct deposits.

Payroll Deductions, Wage Attachments and Garnishments
State and federal payroll taxes will be withheld from your paycheck in accordance with state and federal law. These deductions include state and federal income tax, social security tax (FICA), state disability insurance (SDI) and Family Temporary Disability Insurance (FTDI) taxes. By law, CPA is also required to honor legal attachments and garnishments of an employee’s wages or salaries. If employee wages are attached, CPA will withhold the specified amount to satisfy the terms of the attachment.

SECTION 11: EMPLOYEE CONDUCT

Rules of Conduct
To help to assure orderly operations and provide the best possible work environment, the CPACPA expects employees to follow rules of conduct that will protect the interests and safety of all employees and the CPACPA. It is not possible to list all the forms of behavior that are considered unacceptable in the workplace, but the following are examples of infractions of rules of conduct.
that may result in disciplinary action, including Suspension or Termination of employment. These types of misconduct are provided for purposes of illustration only and in no way alter the at-will employment status of any CPA employees:

1. Theft or inappropriate removal or possession of property of CPA and/or CPA employees or others.
2. Falsification of records including, but not limited to, information provided on an application for employment and time-keeping records;
3. Violation of drug and alcohol abuse, as specified below, including but not limited to reporting for work, being subject to work, or being at work, under the influence of or in possession of alcohol, legal or illegal drugs;
4. Possession, distribution, sale, transfer, or use of alcoholic or illegal drugs in the workplace, while on duty, while operating employer owned vehicles or equipment, or while operating employee owned vehicles or equipment in the conduct of CPA business;
5. Assault, battery, horseplay, fighting or threatening violence in the workplace or while on duty;
6. Disruptive activity in the workplace;
7. Carelessness, incompetence, inefficiency, or negligence.
8. Insubordination;
9. Discourteous or disrespectful treatment of other employees, members of the public, customers, suppliers, or visitors, or other treatment that does not foster cooperation;
10. Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; or willfully restricting work output or encouraging others to do the same;
11. Dishonesty;
12. Violation of safety or health rules;
13. Sexual or other harassment, discrimination, or retaliation in violation of CPA policy or applicable state or federal law;
14. Unauthorized possession of firearms, weapons or explosives on CPA property, or while on duty; or displaying or brandishing any firearm or weapon, whether in jest or otherwise, in any manner which can be construed as a careless, threatening or dangerous manner, except as required in the performance of official duties;
15. Unauthorized use of CPA’s electronic communications systems, including, but not limited to, telephones, email, mail system, or other equipment;
16. Improper use of CPA funds;
17. Acceptance or solicitation of bribes or extortion;
18. Excessive absenteeism or any unauthorized absence;
19. Sleeping on the job or leaving the job without authorization;
20. Failure to maintain job performance standards or to properly or satisfactorily perform assigned duties;
21. Failure to maintain any employment qualification;
22. Gambling on CPA property or during working hours;
23. Conviction of a felony, or conviction of a misdemeanor relating to the employee’s fitness to perform assigned duties; and/or
24. Violation of CPA policies.

**Workplace Violence Prevention**

**A. Objectives.** The CPA is strongly committed to ensuring the safety of all CPA employees. Consistent with this policy, acts or threats of violence, including intimidation, harassment, or coercion which involve or affect CPA employees will not be tolerated and will be subject to appropriate disciplinary action up to and including termination. The following are the objectives of the CPA:

1. To ensure all workplace threats and violent behavior are addressed promptly.
2. To ensure the level of physical and facility security in the CPA’s workplace is sufficient to protect the health and safety of CPA employees.
3. To ensure that all disciplinary action taken for behavior prohibited under this Section is reviewed, evaluated, and administered consistently and equitably throughout the CPA and done so in a timely manner.

**B. Threats or Acts of Violence Defined**

A credible threat of violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the employee’s safety, or the safety of the employee’s immediate family, and that serves no legitimate purpose. General examples of prohibited workplace violence include, but are not limited to the following:

1. Threatening to harm or harming an individual, the employee’s family, friends, associates, or their property;
2. Fighting or challenging another individual to a fight;
3. Intimidation through direct or veiled verbal threats, or through physical threats, such as obscene gestures, grabbing, and pushing;
4. Making harassing or threatening telephone calls; sending harassing or threatening letters, emails, or other correspondence;
5. Intimidating or attempting to coerce an employee to do wrongful acts that would affect the business interests of the CPA;
6. Harassing surveillance or stalking, which is engaging in a pattern of conduct with the intent to follow, alarm, or harass another individual, which presents a credible threat to the individual and causes the individual to fear for the employee’s safety, or the safety of the employee’s immediate family, as defined in California Civil Code Section 1708.7;
7. Suggesting or otherwise intimating that an act to injure persons or property is appropriate behavior;
8. Possession of firearms (loaded or unloaded), weapons, or any other dangerous devices on CPA property. This includes look-alike weapons, such as toy guns. Weapons and dangerous devices may include, but are not limited to the following: blackjacks, slingshots, metal knuckles, explosive substances, dirks, daggers, gas- or spring-
operated guns, knives, folding knives having a blade that locks into place, razor blades, and clubs; and/or

9. Use of a personal or CPA-issued tool or other equipment in a threatening manner toward another.

C. Reporting Workplace Violence. Any employee who is the victim of a threat or act of violence, or any employee who witnesses such conduct, should immediately report the incident to the employee’s Supervisor or other appropriate person in the chain of command. Should the employee perceive that the employee is in immediate danger of a violent act, or has just been victimized by a violent act, or is a witness of a violent act, the employee shall as soon as possible:

1. Place themselves in a safe location.
2. If appropriate, call 911 and request immediate response of a police officer and be prepared to inform the police dispatcher of the circumstances and the exact location of where an officer is needed.
3. Inform a Supervisor or the Human Resources managerDirector, Human Resources of the circumstances.
4. Complete a written report as soon as possible and submit the original copy to the Human Resources managerDirector, Human Resources.
5. Cooperate fully in any administrative or criminal investigation, which shall be conducted within existing policy and laws.
6. Direct all inquiries from the media about violence on CPA premises to the Executive DirectorChief Executive Officer.

D. Reporting Suspected Future Workplace Violence. Employees who have reason to believe they or any CPA employee may be the subject of a violent act in the workplace or as a result of their CPA employment, should immediately notify their Supervisor or the Human Resources managerDirector, Human Resources.

E. Violation of Section. The prohibition against threats and acts of violence applies to all persons involved in the CPA’s operation, including but not limited to CPA employees, Interns, vendors, and anyone else on CPA property. Violations of this section by any individual may be followed by legal action as appropriate, which may include, seeking a temporary restraining order and/or injunction on behalf of CPA employees if the situation warrants such action. In addition to appropriate legal action, violations of this section by employees, including making a false report under this section, may lead to appropriate disciplinary action, up to and including termination.

Drug and Alcohol Abuse

CPA is concerned about the use of alcohol, marijuana, illegal drugs, or controlled substances as it affects the workplace. CPA complies with state and federal drug abuse regulations, including the Drug-Free Workplace Act of 1988 and California Drug-Free Workplace Act of 1990. Use of these substances whether on or off the job can adversely affect the employee’s work performance, efficiency, safety and health. The use, transfer, distribution, sale, being under the influence of, or possession of these substances on the job (regardless of whether on the premises, on duty, or operating a vehicle or potentially dangerous equipment owned by CPA) constitutes a potential danger to the welfare and safety of other employees, and exposes CPA to the risks of property loss or
damage, or injury to other persons. Furthermore, the use of prescription drugs and/or over-the-counter drugs (including medical marijuana) may also affect the employee’s job performance and seriously impair employee’s value to CPA. Any employee who is using prescription or over-the-counter drugs that may impair employee’s ability to safely perform the job, or affect the safety or well-being of others, must notify a Supervisor of such use immediately before starting or resuming work. All precautions necessary to preserve the employee’s privacy will be taken.

This policy will not be construed to prohibit the use of alcohol at social or business functions sponsored by CPA where alcohol is served or while entertaining business associates of CPA. However, employees must always remember their obligation to conduct themselves properly while at company-sponsored functions or while representing CPA. It is the policy of CPA not to reimburse employees for alcohol purchases even when such purchases are made in connection with CPA payment for business meals.

Employees must adhere to the rules stated in this section and Handbook as a condition of employment. Failure to comply with this Handbook may result in Discipline, including Termination. The Human Resources manager/Director, Human Resources has been designated to administer this section, monitor the program and make reports as required by law.

**SECTION 12: EMPLOYEE BENEFITS**

CPA has developed and invested in an employee benefit program to supplement employee’s regular wages. These benefits include health, retirement plan, deferred compensation plan, long term disability insurance, term life insurance, supplemental life insurance, flexible spending accounts, transportation allowance, employee assistance program, and voluntary employee benefits. Details of all benefits are listed in the Employee Benefits Guide. Details of health, retirement plan, long term disability insurance, term life insurance, and transportation allowance benefits are detailed below.

**Health / Dental / Vision**

CPA offers full coverage at the Kaiser Platinum level for employees and dependents. CPA offers basic dental and vision coverage for employees and dependents. CPA reserves the right to charge a copay for dependent coverage. Employees who select a higher cost health insurance option, either PPO or other HMO, cover the cost difference. Cash-out options for those who have health care provided elsewhere (i.e. through a spouse) are available upon proof of coverage comparable or better than the Kaiser Platinum level offered by Clean Power Alliance. The cash-out amount is $500 monthly and may change from time to time.

**Retirement Plan**

Employee will be enrolled automatically in a 403(b) program immediately upon employment unless they choose to opt-out. Employee is eligible for ongoing employer contribution of 6% of the employee salary and up to a 4% employer match contribution, for a maximum total of 10%. Employees own 100% of any employee contribution immediately. Employees have ownership of the employer contribution and any match amount in equal increments over a three (3) year period of employment, (i.e. 33% annually). Employees own 100% of the employer contribution and any match amount after three (3) consecutive years of employment. Any amount not owned by the employee (i.e. in the case that they leave CPA prior to completing 3 years of employment) will be returned to CPA.
Long-Term Disability Insurance
Long-term disability (LTD) insurance shall be provided to all full-time employees at 60% of salary subject to terms of LTD carrier and capped based on salary.

Term Life Insurance
Group life insurance shall be provided to all full-time employees at a minimum benefit amount of one-time (1x) salary, subject to the terms of the insurance carrier.

Transportation Allowance
Full-time employees who choose to work in the office on a regular basis may be eligible for a transportation allowance of $200 to offset commuting costs in accordance with CPA’s overall telecommuting policy, of any non-auto mode of transportation for commuting purposes. To be eligible, employees must request the transportation allowance from the Human Resources manager. Employees requesting the transportation allowance certify that their primary mode of transportation to and from work is via a non-auto mode.

SECTION 13: LAYOFF/SEPARATION FROM EMPLOYMENT

Layoff Procedures and Work Reductions
A. General. Whenever, in the judgment of the CPA Board, it becomes necessary in the interest of economy or reorganization, to eliminate any position or employment, depending on the scope of the reduction, (i.e., agency-wide, job classification, position), employees will be selected for layoff based on a combination of factors, including, but not necessarily limited to: past performance and productivity, qualifications, attendance, attitude, ability and willingness to work the required days and hours, and the ability to work cooperatively with others in the affected work unit.

1. The weight given to the above factors may vary depending upon the needs of the affected work unit and CPA as a whole at the time of the layoff.

2. Seniority shall be considered only when, in CPA’s opinion, all other factors are equal between two or more employees in the affected work unit. Seniority will be computed based on an employee’s total continuous service with CPA. For this purpose, continuous service before and after any break in service of less than thirty (30) Days or an approved leave of absence, will be counted.

B. Vacancy and Demotion. Except as otherwise provided, whenever there is a reduction in the work force, the Executive Director shall first demote an employee identified for Layoff to a Vacancy, if any, within the same department in a position with a Reduction in Pay, for which the employee is qualified. Secondly, employees may request to demote to a vacant position within the organization. An employee requesting a Demotion must file a written request with the Supervisor within five (5) business days of receiving written notice of Layoff. An employee who is offered a Demotion has the right to refuse the Demotion.

Severance
CPA does not maintain a formal severance pay policy nor provide severance pay to employees who leave CPA for any reason. Severance pay should therefore not be expected. However, CPA reserves
the right to make exceptions to this Handbook at any time and may provide for severance pay in certain circumstances at its sole discretion.

**Separation from Employment with CPA**

**A. Abandonment of Position.** An employee may be terminated from employment if the employee is on an unauthorized leave of absence as set forth in Section 6.

**B. Layoff/Expiration of Contract Work.** As provided in Section 2 an employee may be separated by Layoff or expiration of the timeframe for which the position was created.

**C. Resignation.** An employee wishing to leave employment in good standing will file with the Human Resources manager Director, Human Resources a written Resignation stating the effective date at least two (2) weeks before leaving the service, unless approval for a shorter notice is obtained by the Supervisor Executive Director. Resignation will be deemed accepted upon submission. A Resignation made without the notice required may be regarded as cause for denying the resigning employee future employment with CPA and will be considered a Resignation not in good standing.

**D. Retirement.** Retirement from employment will be subject to the terms and conditions of the applicable statutes, rules, and regulations of their 403(b)/457(b) retirement plan(s) with CPA.

**E. Disability.** An employee may be separated for disability when the employee cannot perform the essential functions of the job, with or without a legally required reasonable accommodation, and is either not eligible to retire for disability or waives that right voluntarily.

**F. Death of the Employee.** In the event of a death of an employee, payment of all earned wages due will be in accordance with the laws of the State of California. Unless otherwise provided by law, payment of any other funds due will be paid to the beneficiary so designated in writing by the employee.

**Exit Interviews**

If employee resigns voluntarily, the Human Resources manager Director, Human Resources or employee’s direct Supervisor will conduct an interview whenever feasible. This interview will allow the employee to communicate employee’s views on the employee’s work with CPA and the job requirements, operations and training needs. It also provides the employee an opportunity to discuss issues concerning benefits and insurance. At the time of the interview, employees are expected to return all company-furnished equipment, such as I.D. cards, keys, and credit cards.

**SECTION 14: SALARY DISCLOSURE**

As a public agency, CPA is committed to transparency. As such, salary ranges salaries of all positions will be disclosed as required under California law.
EMPLOYEE ACKNOWLEDGEMENT FORM

This is to acknowledge that I have received a copy of the Clean Power Alliance (“CPA”) Employee Handbook and understand that it contains important information on CPA’s general personnel policies and on my privileges and obligations as an employee. I acknowledge that I am expected to read, understand, and adhere to CPA policies and will familiarize myself with the material in the handbook. I understand that I am governed by the contents of the handbook and that CPA may change, rescind or add to any policies, benefits or practices described in this handbook, other than the employment-at-will policy, from time to time in its sole and absolute discretion, with or without prior notice. CPA will advise employees of material changes within a reasonable timeframe.

Furthermore, I understand that employment with CPA is not for a specified term and is at the mutual consent of the employee and CPA. Accordingly, either the employee or CPA can terminate the employment relationship at will, with or without cause, at any time. This represents a final and binding integrated agreement with respect to the at-will nature of the employment relationship and cannot be modified, unless it is modified in a written agreement signed both by the Executive Director/Chief Executive Officer and I.

I UNDERSTAND THAT NOTHING CONTAINED IN THE HANDBOOK IS INTENDED TO CREATE, NOR BE CONSTRUED AS Creating, AN EXPRESS OR IMPLIED CONTRACT, OR GUARANTEE OF EMPLOYMENT FOR A DEFINITE OR INDEFINITE TERM.

________________________________________  __________________________
EMPLOYEE’S SIGNATURE                  DATE

________________________________________
EMPLOYEE’S PRINTED NAME
To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Chief Executive Officer
Subject: Management Report
Date: December 1, 2022

Post-Covid Utility Bill Relief Credits
Over the next three months, CPA will be applying $10.5 million in bill credits to approximately 55,000 residential customer accounts using funds allocated by the State of California to assist those who have past due balances accrued during the later stages of the Covid-19 pandemic, June to December 2021. Bill credits will be applied automatically – eligible customers and their amounts have already been determined – so customers do not need to apply for these funds. Application of these funds will reduce CPA’s account receivables and increase CPA’s cash position. CPA was a key player in the coalition that pushed for this second and final round of utility bill assistance, called the California Arrearage Payment Program, or CAPP. More information about the overall state program can be found here.

City Manager Meeting
In order to deepen the connections between CPA and its member agencies, CPA Board Chair Julian Gold and CEO Ted Bardacke are planning two lunch meetings with the City Managers of CPA member agencies, one in Los Angeles on January 12th and one in Ventura on January 26th. In addition to providing an overview of CPA’s operations, the meetings will be an opportunity to hear from City Managers about how CPA can expand its support for communities’ clean energy and sustainability priorities. These meetings will be the first in a series of conversations that CPA will facilitate in order to more regularly connect with City Managers and other member agency staff.
Default Rate Change Update

Eight CPA member agencies underwent complete or partial default rate changes in October. CPA, in collaboration with the participating member agencies, began full-scale outreach customer activity related to the default rate change in September, including mailing two notices to each one of the approximately 300,000 potentially affected customers. As of November 21, 2,430 (0.82%) of these customers had exercised an alternative choice to their default change, split equally between those choosing to opt-down and those choosing to opt-out.

Customer Participation Rate and Opt Actions

As of November 17, 2022, CPA’s overall participation rate was 93% and had 1,003,150 active customers, up 1,276 customers from the previous month. Opt-out levels – 335 accounts through the third week of November – are lower than what CPA typically experiences in the fourth quarter of the year even after accounting for the default changes. New accounts (“move-ins”) were higher than closed accounts (“move-outs”) by 789 customers in November. Attachment 1 provides participation rates and active accounts by jurisdiction.

As described to the Board in November, this month CPA began using a revised participation rate calculation methodology based on new data being received from Southern California Edison (SCE). Access to this data was a result of a $4.25 million legal settlement between CPA and SCE approved by the CPA Board in June 2020 and a subsequent ruling by the California Public Utilities Commission. Due to this revision, participation rates have dropped by an average of three percentage points even though the number of active customers served by CPA has been rising for the past year. The new data reveals that CPA underestimated the number of eligible customers in our service territory since early 2021 while awaiting actual data from SCE for over a year.

The new data being received from SCE also indicates there are approximately 5,000 accounts that seemingly should have been enrolled in CPA service by SCE but have not been. CPA staff are working with SCE to validate the status of these accounts and to develop an enrollment plan for those that indeed should be CPA customers.
Customer Service Center Performance
Incoming calls to CPA’s Customer Service Center fell during the first three weeks in November despite default rate change notifications. Through November 21, CPA received 926 calls, down from 2,153 calls in the month of October. 99% of calls were answered within 45 seconds, up from 96% in September, and average wait time was 6 seconds, down from 9 seconds in October.

Monthly Financial Performance
CPA suffered heat-wave related losses of $18.8 million in September but closed out the first quarter of the fiscal year with just a $3.4 million loss, in healthy financial shape with ample liquidity. The monthly financial performance dashboard is included in Item 5 of this Board packet, as part of the complete financial results for the first quarter of FY 22/23. Additional information about the financial and energy market impacts of the record-setting September heat wave can be found in the Finance Committee agenda packet located here.

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 2. The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

ATTACHMENTS
1. Overall Participation Rates by Jurisdiction
2. Non-Energy Contracts Executed under CEO’s Authority
### Participation by City and County

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Default Option</th>
<th>Active Accounts</th>
<th>Participation Rate</th>
<th>Lean %</th>
<th>Clean %</th>
<th>100% Green %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agoura Hills</td>
<td>100% Green</td>
<td>8,095</td>
<td>88.5%</td>
<td>2.1%</td>
<td>0.4%</td>
<td>97.5%</td>
</tr>
<tr>
<td>Alhambra</td>
<td>Clean</td>
<td>34,013</td>
<td>95.6%</td>
<td>1.5%</td>
<td>98.3%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Arcadia</td>
<td>Lean</td>
<td>22,493</td>
<td>95.6%</td>
<td>0.1%</td>
<td>99.8%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Beverly Hills</td>
<td>100% Green</td>
<td>18,669</td>
<td>97.5%</td>
<td>1.7%</td>
<td>0.1%</td>
<td>98.2%</td>
</tr>
<tr>
<td>Calabasas</td>
<td>100% Green</td>
<td>9,719</td>
<td>93.7%</td>
<td>1.8%</td>
<td>0.3%</td>
<td>97.9%</td>
</tr>
<tr>
<td>Camarillo</td>
<td>100% Green</td>
<td>28,340</td>
<td>90.1%</td>
<td>0.9%</td>
<td>0.1%</td>
<td>99.0%</td>
</tr>
<tr>
<td>Carson</td>
<td>Clean</td>
<td>29,277</td>
<td>95.8%</td>
<td>1.3%</td>
<td>98.5%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Claremont</td>
<td>100% Green</td>
<td>12,564</td>
<td>91.4%</td>
<td>2.6%</td>
<td>0.3%</td>
<td>97.1%</td>
</tr>
<tr>
<td>Culver City</td>
<td>100% Green</td>
<td>19,221</td>
<td>95.2%</td>
<td>3.9%</td>
<td>1.1%</td>
<td>95.0%</td>
</tr>
<tr>
<td>Downey</td>
<td>Clean</td>
<td>36,753</td>
<td>95.2%</td>
<td>1.5%</td>
<td>98.4%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Hawaiian Gardens</td>
<td>Clean</td>
<td>3,634</td>
<td>95.6%</td>
<td>1.2%</td>
<td>96.8%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Hawthorne</td>
<td>100% Green</td>
<td>28,469</td>
<td>97.4%</td>
<td>0.2%</td>
<td>1.5%</td>
<td>98.3%</td>
</tr>
<tr>
<td>Los Angeles County</td>
<td>100% Green</td>
<td>298,507</td>
<td>94.6%</td>
<td>1.8%</td>
<td>38.8%</td>
<td>59.4%</td>
</tr>
<tr>
<td>Malibu</td>
<td>100% Green</td>
<td>6,969</td>
<td>95.3%</td>
<td>2.9%</td>
<td>0.4%</td>
<td>96.7%</td>
</tr>
<tr>
<td>Manhattan Beach</td>
<td>100% Green</td>
<td>15,479</td>
<td>96.1%</td>
<td>2.7%</td>
<td>0.2%</td>
<td>97.1%</td>
</tr>
<tr>
<td>Moorpark</td>
<td>Clean</td>
<td>11,417</td>
<td>85.9%</td>
<td>3.1%</td>
<td>96.3%</td>
<td>0.6%</td>
</tr>
<tr>
<td>Ojai</td>
<td>100% Green</td>
<td>3,503</td>
<td>89.3%</td>
<td>6.1%</td>
<td>1.2%</td>
<td>92.7%</td>
</tr>
<tr>
<td>Oxnard</td>
<td>100% Green</td>
<td>55,652</td>
<td>92.9%</td>
<td>4.0%</td>
<td>0.6%</td>
<td>95.4%</td>
</tr>
<tr>
<td>Paramount</td>
<td>Lean</td>
<td>15,596</td>
<td>96.7%</td>
<td>96.2%</td>
<td>2.9%</td>
<td>0.9%</td>
</tr>
<tr>
<td>Redondo Beach</td>
<td>100% Green</td>
<td>33,221</td>
<td>96.5%</td>
<td>1.7%</td>
<td>0.0%</td>
<td>98.3%</td>
</tr>
<tr>
<td>Rolling Hills Estates</td>
<td>100% Green</td>
<td>3,492</td>
<td>91.7%</td>
<td>7.0%</td>
<td>1.6%</td>
<td>91.4%</td>
</tr>
<tr>
<td>Santa Monica</td>
<td>100% Green</td>
<td>54,080</td>
<td>94.6%</td>
<td>3.5%</td>
<td>0.8%</td>
<td>95.7%</td>
</tr>
<tr>
<td>Sierra Madre</td>
<td>100% Green</td>
<td>4,950</td>
<td>92.2%</td>
<td>5.5%</td>
<td>1.6%</td>
<td>92.9%</td>
</tr>
<tr>
<td>Simi Valley</td>
<td>Lean</td>
<td>43,203</td>
<td>89.7%</td>
<td>99.6%</td>
<td>0.1%</td>
<td>0.2%</td>
</tr>
<tr>
<td>South Pasadena</td>
<td>100% Green</td>
<td>11,616</td>
<td>95.1%</td>
<td>3.8%</td>
<td>0.7%</td>
<td>95.5%</td>
</tr>
<tr>
<td>Temple City</td>
<td>Lean</td>
<td>12,552</td>
<td>95.9%</td>
<td>99.8%</td>
<td>0.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Thousand Oaks</td>
<td>100% Green</td>
<td>44,301</td>
<td>83.2%</td>
<td>8.1%</td>
<td>1.6%</td>
<td>90.3%</td>
</tr>
<tr>
<td>Ventura</td>
<td>100% Green</td>
<td>43,811</td>
<td>89.3%</td>
<td>4.8%</td>
<td>1.4%</td>
<td>93.8%</td>
</tr>
<tr>
<td>Ventura County</td>
<td>100% Green</td>
<td>32,264</td>
<td>84.2%</td>
<td>6.5%</td>
<td>1.3%</td>
<td>92.2%</td>
</tr>
<tr>
<td>West Hollywood</td>
<td>100% Green</td>
<td>26,473</td>
<td>97.2%</td>
<td>2.4%</td>
<td>0.4%</td>
<td>97.2%</td>
</tr>
<tr>
<td>Westlake Village</td>
<td>Lean</td>
<td>3,727</td>
<td>88.0%</td>
<td>99.5%</td>
<td>0.1%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Whittier</td>
<td>Clean</td>
<td>31,090</td>
<td>94.3%</td>
<td>1.8%</td>
<td>98.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1,003,150</strong></td>
<td><strong>93.1%</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Overall Participation by Rate Product

<table>
<thead>
<tr>
<th>Default Option</th>
<th>Participation Rate</th>
<th>Rate Product</th>
<th>Active Accounts</th>
<th>% of Active</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green</td>
<td>92.7%</td>
<td>100% Green</td>
<td>618,165</td>
<td>61.6%</td>
</tr>
<tr>
<td>Clean</td>
<td>93.7%</td>
<td>Clean</td>
<td>263,407</td>
<td>26.3%</td>
</tr>
<tr>
<td>Lean</td>
<td>93.2%</td>
<td>Lean</td>
<td>121,578</td>
<td>12.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>93.1%</strong></td>
<td><strong>Total</strong></td>
<td><strong>1,003,150</strong></td>
<td><strong>100.00%</strong></td>
</tr>
</tbody>
</table>
## Clean Power Alliance

Non-energy contracts executed under Chief Executive Officer authority

Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cision</td>
<td>Media/PR wire distribution services</td>
<td>November</td>
<td>$2,240</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>NewGen</td>
<td>ERRA forecast support</td>
<td>November</td>
<td>$11,000</td>
<td>Active</td>
<td>Amendment to update scope of PSA for SCE Green Tariff Shared Renewable Rate Review</td>
</tr>
<tr>
<td>Sigma</td>
<td>Data analytics tool</td>
<td>October</td>
<td>$13,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Language Line</td>
<td>Translation services</td>
<td>October</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Langan</td>
<td>GIS services</td>
<td>October</td>
<td>$125,000</td>
<td>Active</td>
<td>Second renewal term</td>
</tr>
<tr>
<td>Mercer</td>
<td>Compensation and benefits study refresh</td>
<td>September</td>
<td>$75,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Pickit</td>
<td>Digital asset library</td>
<td>September</td>
<td>$2,900</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Salesforce</td>
<td>Stakeholder Relationship Management application subscription</td>
<td>August</td>
<td>$15,300</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Elite Edge Consulting</td>
<td>Accounting services</td>
<td>August</td>
<td>$90,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Oscar Associates</td>
<td>Recruiting Services</td>
<td>August</td>
<td>N/A</td>
<td>Active</td>
<td>Amendment to reduce placement fees to 25% of starting salary of exclusively referred candidate</td>
</tr>
<tr>
<td>Burke, Williams, Sorenson, LLP</td>
<td>Legal Services Agreement (Brown Act, public entity governance issues and other legal services)</td>
<td>July</td>
<td>$100,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Hall Energy Law PC</td>
<td>Energy Procurement Counsel</td>
<td>July</td>
<td>$125,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Helpmates</td>
<td>Temporary staffing services</td>
<td>July</td>
<td>N/A</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Baker Tilly</td>
<td>Financial audit services</td>
<td>June</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>IHS Market</td>
<td>Subscription for CAISO forecasts</td>
<td>June</td>
<td>$15,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>MBI</td>
<td>Marketing contract renewal</td>
<td>June</td>
<td>$7,687</td>
<td>Active</td>
<td>3% increase to Board approved NTE upon renewal</td>
</tr>
<tr>
<td>Adobe Inc.</td>
<td>AdobeSign Secure Electronic Signature Service</td>
<td>June</td>
<td>$3,200</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Snowflake Inc.</td>
<td>Cloud-Native Elastic Data Warehouse Service</td>
<td>June</td>
<td>$25,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Fraser</td>
<td>Marketing contract renewal</td>
<td>June</td>
<td>$55,647</td>
<td>Active</td>
<td>9% increase to Board approved NTE upon renewal</td>
</tr>
<tr>
<td>John Kotch</td>
<td>IT Consulting</td>
<td>June</td>
<td>$3,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>AiQueous</td>
<td>Salesforce implementation</td>
<td>June</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Place and Page</td>
<td>Graphic design and branding</td>
<td>June</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Informal Development</td>
<td>Website development</td>
<td>May</td>
<td>$50,000</td>
<td>Active</td>
<td></td>
</tr>
</tbody>
</table>

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
# Clean Power Alliance

## Non-energy contracts executed under Chief Executive Officer authority

**Rolling 12 months -- Open contracts shown in Bold**

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapman &amp; Cutler, LLP</td>
<td>2021 Legal Services (CPA’s Credit Agreement)</td>
<td>April 2022</td>
<td>$55,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Polsinelli, LLP</td>
<td>Legal Service Agreement (Employment, Compliance, General Legal Support related to Commercial Liability, Risk, and Mitigation issues)</td>
<td>April 2022</td>
<td>$75,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Shute, Mihaly &amp; Weinberger, LLP</td>
<td>Legal Service Agreement (Regulatory, Administrative, Environmental, Energy Procurement, Public Contracting, Public Entity Governance Laws, Issues and/or Proceedings)</td>
<td>April 2022</td>
<td>$65,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Lattice</td>
<td>Performance management software</td>
<td>April 2022</td>
<td>$9,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Active San Gabriel Valley</td>
<td>Grant for community-based outreach</td>
<td>April 2022</td>
<td>$8,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>MERITO</td>
<td>Grant for community-based outreach</td>
<td>April 2022</td>
<td>$8,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Davis Wright Tremaine</td>
<td>Legal services (regulatory)</td>
<td>March 2022</td>
<td>$125,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Linkedin</td>
<td>Subscription for recruiting tools</td>
<td>March 2022</td>
<td>$34,306</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>MCM</td>
<td>Municipal advisory services</td>
<td>March 2022</td>
<td>$125,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Pinnacle</td>
<td>AV maintenance/service plan</td>
<td>March 2022</td>
<td>$25,273</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Gridwell</td>
<td>Resource adequacy training</td>
<td>February 2022</td>
<td>$2,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Abbot, Stringham and Lynch</td>
<td>IT compliance reporting for CPUC</td>
<td>February 2022</td>
<td>$8,500</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>California Science Center</td>
<td>Event space rental for Staff Retreat</td>
<td>February 2022</td>
<td>$6,440</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Orange Grove Consulting</td>
<td>DEI implementation planning services</td>
<td>February 2022</td>
<td>$105,750</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Zoe Misquez</td>
<td>Filing lobbying compliance forms</td>
<td>January 2022</td>
<td>$500</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Critical Mention, Inc.</td>
<td>Media monitoring service</td>
<td>January 2022</td>
<td>$6,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Clear Language Company</td>
<td>Minute transcription for board meetings</td>
<td>January 2022</td>
<td>$0</td>
<td></td>
<td>Original Contract Date: November 2021 NTE $20,000 Amendment 1 - $0, to clarify fee structure</td>
</tr>
<tr>
<td>PR Web/Cision</td>
<td>Media/PR wire distribution services</td>
<td>January 2022</td>
<td>$3,060</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Ironclad</td>
<td>Contract lifecycle management platform</td>
<td>January 2022</td>
<td>$22,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>PrimeGov</td>
<td>Board and committee meeting agenda management software</td>
<td>December 2021</td>
<td>$16,000</td>
<td>Active</td>
<td>Renewal</td>
</tr>
<tr>
<td>Omni Government Relations &amp; Pinnacle Advocacy, LLC</td>
<td>Lobbying Services</td>
<td>November 2021</td>
<td>$125,000</td>
<td>Active</td>
<td>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</td>
</tr>
<tr>
<td>Vendor</td>
<td>Purpose</td>
<td>Month</td>
<td>NTE Amount</td>
<td>Status</td>
<td>Notes</td>
</tr>
<tr>
<td>---------------------------</td>
<td>---------------------------------------------------</td>
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<td>---------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>MRW &amp; Associates</td>
<td>Extension of ratemaking services contract</td>
<td>October 2021</td>
<td>$35,000</td>
<td>Active</td>
<td>Original Contract Date: December 2020 NTE $90,000 Amendment #1 - NTE increased to $125,000 Extends through 12/2/2022 (renewals authorized)</td>
</tr>
<tr>
<td>Clean Energy Counsel LLP</td>
<td>Extension of legal services agreement</td>
<td>September 2021</td>
<td>$30,000</td>
<td>Active</td>
<td>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)</td>
</tr>
<tr>
<td>AccuWeather Enterprise Solutions</td>
<td>Professional Forecasting Weather Services</td>
<td>April 2021</td>
<td>$4,800</td>
<td>Active</td>
<td>Addendum to April 2020 Agreement. Extended through March 2023 at $400/mo</td>
</tr>
<tr>
<td>OpenPath</td>
<td>New Office Keycard Access Control System</td>
<td>January 2021</td>
<td>$1,500</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Crown Castle Fiber LLC</td>
<td>New Office Dedicated Internet Access Service</td>
<td>September 2020</td>
<td>$18,600</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>NextLevel Internet, Inc.</td>
<td>New Office High Speed Internet Service</td>
<td>September 2020</td>
<td>$6,936</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Windstream Services, LLC</td>
<td>New Office Telephone Service</td>
<td>September 2020</td>
<td>$14,095</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Zero Outages</td>
<td>New Office Security, Firewall, &amp; Wi-Fi Service</td>
<td>September 2020</td>
<td>$7,608</td>
<td>Active</td>
<td></td>
</tr>
</tbody>
</table>
### Commonly Used Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BESS</td>
<td>Battery Energy Storage System</td>
</tr>
<tr>
<td>CAC</td>
<td>Community Advisory Committee</td>
</tr>
<tr>
<td>CAISO</td>
<td>California Independent System Operator</td>
</tr>
<tr>
<td>CALCCA</td>
<td>California Community Choice Association</td>
</tr>
<tr>
<td>CalEVIP</td>
<td>California Electric Vehicle Incentive Program</td>
</tr>
<tr>
<td>CARB</td>
<td>California Air Resources Board</td>
</tr>
<tr>
<td>CARE</td>
<td>California Alternate Rates for Energy (Low Income Discount Rate)</td>
</tr>
<tr>
<td>CCA</td>
<td>Community Choice Aggregation</td>
</tr>
<tr>
<td>CEC</td>
<td>California Energy Commission</td>
</tr>
<tr>
<td>CPUC</td>
<td>California Public Utilities Commission</td>
</tr>
<tr>
<td>DA</td>
<td>Direct Access (Private Retail Energy Supplier)</td>
</tr>
<tr>
<td>DAC</td>
<td>Disadvantaged Community (As Defined by Calenviroscreen 3.0)</td>
</tr>
<tr>
<td>DER</td>
<td>Distributed Energy Resources</td>
</tr>
<tr>
<td>DR</td>
<td>Demand Response</td>
</tr>
<tr>
<td>ERMP</td>
<td>Energy Risk Management Policy</td>
</tr>
<tr>
<td>ERRA</td>
<td>Energy Resource Recovery Account (SCE Generation Rate Setting)</td>
</tr>
<tr>
<td>ESA</td>
<td>Energy Storage Agreement</td>
</tr>
<tr>
<td>EVSE</td>
<td>Electric Vehicle Supply Equipment (EV Charger)</td>
</tr>
<tr>
<td>FERA</td>
<td>Family Electric Rate Assistance (Low Income Discount Rate)</td>
</tr>
<tr>
<td>GHG</td>
<td>Greenhouse Gas</td>
</tr>
<tr>
<td>IOU</td>
<td>Investor Owned Utility</td>
</tr>
<tr>
<td>IRP</td>
<td>Integrated Resource Plan</td>
</tr>
<tr>
<td>JPA</td>
<td>Joint Powers Authority</td>
</tr>
</tbody>
</table>
### Commonly Used Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kwh</td>
<td>Kilowatt-Hour (A Measure of Energy Used in A One-Hour Period)</td>
</tr>
<tr>
<td>Kw</td>
<td>Kilowatt = 1,000 Watts (Watt = A Measure of Instantaneous Power)</td>
</tr>
<tr>
<td>LSE</td>
<td>Load Serving Entity</td>
</tr>
<tr>
<td>MB</td>
<td>Medical Baseline (Discount Rate for Medical Equipment Needs)</td>
</tr>
<tr>
<td>MW</td>
<td>Megawatt = 1,000 Kilowatts</td>
</tr>
<tr>
<td>Mwh</td>
<td>Megawatt-Hour = 1,000 Kilowatt-Hours</td>
</tr>
<tr>
<td>NEM</td>
<td>Net Energy Metering (Usually for Customers with Solar)</td>
</tr>
<tr>
<td>OAT</td>
<td>Other Applicable Tariffs</td>
</tr>
<tr>
<td>PCIA</td>
<td>Power Charge Indifference Adjustment (Can Be Called “Exit Fee”)</td>
</tr>
<tr>
<td>PCC1</td>
<td>Renewable Energy Generated Inside California</td>
</tr>
<tr>
<td>PCC2</td>
<td>Renewable Energy Generated Outside California</td>
</tr>
<tr>
<td>PCC3</td>
<td>A REC from A Renewable Resource, Delivered Without Energy</td>
</tr>
<tr>
<td>PCL</td>
<td>Power Content Label</td>
</tr>
<tr>
<td>POU</td>
<td>Publicly Owned or Municipal Utility</td>
</tr>
<tr>
<td>PPA</td>
<td>Power Purchase Agreement</td>
</tr>
<tr>
<td>PSPS</td>
<td>Public Safety Power Shutoff</td>
</tr>
<tr>
<td>PV</td>
<td>Photovoltaic (Solar) Panels</td>
</tr>
<tr>
<td>RA</td>
<td>Resource Adequacy</td>
</tr>
<tr>
<td>REC</td>
<td>Renewable Energy Credit</td>
</tr>
<tr>
<td>RPS</td>
<td>Renewables Portfolio Standard</td>
</tr>
<tr>
<td>T&amp;D</td>
<td>Transmission and Distribution</td>
</tr>
<tr>
<td>TOU</td>
<td>Time Of Use (Used to Refer to Rates that Differ by Time Of Day)</td>
</tr>
<tr>
<td>WECC</td>
<td>Western Electricity Coordinating Council</td>
</tr>
</tbody>
</table>