**ADVICE LETTER**

**SUMMARY**

**ENERGY UTILITY**

**MUST BE COMPLETED BY UTILITY** (Attach additional pages as needed)

<table>
<thead>
<tr>
<th>Company name/CPUC Utility No.:</th>
<th>Clean Power Alliance of Southern California</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility type:</td>
<td></td>
</tr>
<tr>
<td>☑ ELC  ☐ GAS  ☐ WATER</td>
<td></td>
</tr>
<tr>
<td>☐ PLC  ☐ HEAT</td>
<td></td>
</tr>
<tr>
<td>Contact Person:</td>
<td>C.C. Song</td>
</tr>
<tr>
<td>Phone #:</td>
<td>213 713 0363</td>
</tr>
<tr>
<td>E-mail:</td>
<td><a href="mailto:csong@cleanpoweralliance.org">csong@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail Disposition Notice to:</td>
<td><a href="mailto:csong@cleanpoweralliance.org">csong@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>(Date Submitted / Received Stamp by CPUC)</td>
<td>October 29, 2021</td>
</tr>
</tbody>
</table>

Advice Letter (AL) #: 0010-E  Tier Designation: 2

**Subject of AL:**
Clean Power Alliance of Southern California’s Disadvantaged Communities Green Tariff Program and Community Solar Green Tariff Program 2021 Power Purchase Agreement Approval

**Keywords (choose from CPUC listing):**

- **AL Type:** ☑ One-Time  ☐ Other
- **If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:**
  - Decision 18-06-027, Resolution E-4999, and Resolution E-5102

**Does AL replace a withdrawn or rejected AL?** If so, identify the prior AL: N/A

**Summarize differences between the AL and the prior withdrawn or rejected AL:** N/A

**Confidential treatment requested?** ☑ Yes  ☐ No

If yes, specification of confidential information: See Attachment C

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/access to confidential information: Nancy Whang: nwhang@cleanpoweralliance.org

**Resolution required?** ☐ Yes  ☑ No

**Requested effective date:**

**No. of tariff sheets:**

**Estimated system annual revenue effect (%):** N/A

**Estimated system average rate effect (%):** N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

**Tariff schedules affected:** N/A

**Service affected and changes proposed:** N/A

**Pending advice letters that revise the same tariff sheets:** N/A

*Discuss in AL if more space is needed.*
Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

<table>
<thead>
<tr>
<th>Name</th>
<th>C.C. Song</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Director of Regulatory Affairs</td>
</tr>
<tr>
<td>Utility Name</td>
<td>Clean Power Alliance of Southern California</td>
</tr>
<tr>
<td>Address</td>
<td>801 S. Grand Ave., Ste 400</td>
</tr>
<tr>
<td>City</td>
<td>Los Angeles</td>
</tr>
<tr>
<td>State</td>
<td>California</td>
</tr>
<tr>
<td>Zip</td>
<td>90017</td>
</tr>
<tr>
<td>Telephone (xxx-xxxx)</td>
<td>(213) 713-0363</td>
</tr>
<tr>
<td>Facsimile (xxx-xxxx)</td>
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</tr>
<tr>
<td>Email</td>
<td><a href="mailto:csong@cleanpoweralliance.org">csong@cleanpoweralliance.org</a></td>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Francis Choi</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Regulatory Analyst</td>
</tr>
<tr>
<td>Utility Name</td>
<td>Clean Power Alliance of Southern California</td>
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<tr>
<td>Address</td>
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<tr>
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</tr>
<tr>
<td>Zip</td>
<td>90017</td>
</tr>
<tr>
<td>Telephone (xxx-xxxx)</td>
<td>(213) 880-9934</td>
</tr>
<tr>
<td>Facsimile (xxx-xxxx)</td>
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<tr>
<td>Email</td>
<td><a href="mailto:fchoi@cleanpoweralliance.org">fchoi@cleanpoweralliance.org</a></td>
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<td>ENERGY Advice Letter Keywords</td>
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<td><strong>Affiliate</strong></td>
<td><strong>Direct Access</strong></td>
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<tr>
<td><strong>Agreements</strong></td>
<td><strong>Disconnect Service</strong></td>
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<tr>
<td><strong>Agriculture</strong></td>
<td><strong>ECAC / Energy Cost Adjustment</strong></td>
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<td><strong>Avoided Cost</strong></td>
<td><strong>EOR / Enhanced Oil Recovery</strong></td>
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<td><strong>Balancing Account</strong></td>
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<td><strong>Baseline</strong></td>
<td><strong>Energy Efficiency</strong></td>
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<tr>
<td><strong>Bilingual</strong></td>
<td><strong>Establish Service</strong></td>
</tr>
<tr>
<td><strong>Billings</strong></td>
<td><strong>Expand Service Area</strong></td>
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<tr>
<td><strong>Bioenergy</strong></td>
<td><strong>Forms</strong></td>
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<tr>
<td><strong>Brokerage Fees</strong></td>
<td><strong>Franchise Fee / User Tax</strong></td>
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<td><strong>CARE</strong></td>
<td><strong>G.O. 131-D</strong></td>
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<tr>
<td><strong>CPUC Reimbursement Fee</strong></td>
<td><strong>GRC / General Rate Case</strong></td>
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<td><strong>Capacity</strong></td>
<td><strong>Hazardous Waste</strong></td>
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<tr>
<td><strong>Cogeneration</strong></td>
<td><strong>Increase Rates</strong></td>
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<td><strong>Compliance</strong></td>
<td><strong>Interruptible Service</strong></td>
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<tr>
<td><strong>Conditions of Service</strong></td>
<td><strong>Interutility Transportation</strong></td>
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<tr>
<td><strong>Connection</strong></td>
<td><strong>LIFE / Low-Income Energy Efficiency</strong></td>
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<tr>
<td><strong>Conservation</strong></td>
<td><strong>LIRA / Low-Income Ratepayer Assistance</strong></td>
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<td><strong>Consolidate Tariffs</strong></td>
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<tr>
<td><strong>Contracts</strong></td>
<td><strong>Line Extensions</strong></td>
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<tr>
<td><strong>Core</strong></td>
<td><strong>Memorandum Account</strong></td>
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<td><strong>Metered Energy Efficiency</strong></td>
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<td><strong>Curtailable Service</strong></td>
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<td><strong>Customer Charge</strong></td>
<td><strong>Mobile Home Parks</strong></td>
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<td><strong>Customer Owned Generation</strong></td>
<td><strong>Name Change</strong></td>
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<td><strong>Decrease Rates</strong></td>
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<td><strong>Demand Side Management</strong></td>
<td><strong>Oil Pipelines</strong></td>
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<td><strong>Demand Side Response</strong></td>
<td><strong>PBR / Performance Based Ratemaking</strong></td>
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<td><strong>Deposits</strong></td>
<td><strong>Portfolio</strong></td>
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<tr>
<td><strong>Depreciation</strong></td>
<td><strong>Power Lines</strong></td>
</tr>
</tbody>
</table>
October 29, 2021

California Public Utilities Commission
Energy Division
Attention: Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

CPA Advice Letter 0010-E
SUBJECT: Clean Power Alliance of Southern California’s Disadvantaged Communities Green Tariff Program and Community Solar Green Tariff Program 2021 Power Purchase Agreement Approval

PURPOSE

Pursuant to California Public Utilities Commission’s (“Commission”) Decision (“D.”) 18-06-0271 and Resolution E-51022, Clean Power Alliance of Southern California (“CPA”) respectfully submits this Advice Letter (“AL”) for approval of one fully executed power purchase agreement (“PPA”) that resulted from CPA’s initial Disadvantaged Communities Green Tariff (“DAC-GT”) Request for Offer (“RFO”).

CPA hereby submits this AL requesting approval of the PPA that are attached hereto as follows:

Attachment A: Renewable Power Purchase Agreement between CPA and Radiant BMT, LLC (“Seller”), dated as of September 3, 2021 (“Minneola PPA”)

Attachment B: Redline of Minneola PPA and Pro Forma PPA (as defined below)

Attachment C: Confidentiality Declaration

BACKGROUND

On June 21, 2018, the Commission issued D.18-06-027 adopting three new programs to promote the installation of renewable generation among residential customers in DACs,3 as directed by the

---

1 See D. 18-06-027 at pages 87-88.
2 Resolution E-5102 at page 15, Ordering Paragraph (OP) 2.
3 DACs are defined under D.18-06-027 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.
California Legislature in Assembly Bill (AB) 327 (Perea), Stats. 2013, ch 611. Pursuant to D.18-06-027, Community Choice Aggregators (“CCAs”) may develop and implement their own DAC-GT and CSGT programs. CCA programs must abide by all DAC-GT or CSGT rules and requirements adopted in D. 18-06-027. The Decision provides that CCAs must file a Tier 3 advice letter to implement the CCA DAC-GT and CSGT programs and allows CCAs to combine DAC-GT and CSGT proposals into one Tier 3 advice letter. Resolution E-4999 further stipulates that such advice letters must be filed on or before January 1, 2021 or the capacity allocated to the CCA will be reverted to an IOU or another CCA.

CPA filed its Tier 3 Advice Letter on December 27, 2019, to create DAC-GT and CSGT programs consistent with all provisions in D.18-06-027, D.18-10-007, Resolution E-4999, as well as guidance received from the Commission’s Energy Division.

Subsequently, the Commission issued Resolution E-5102 on November 5, 2020, and approved CPA’s DAC-GT and CSGT program Advice Letter. Resolution E-5102 specifically requires CPA to “submit all executed Power Purchase Agreements via a Tier 2 Advice Letter for approval no later than 180 days following notification of selected bidders.” CPA now submits this AL to request approval of the executed PPA attached hereto.

**SUMMARY OF SOLICITATION PROCESS**

1. **Process Overview**

Procurement for the DAC-GT and CSGT programs ran simultaneously and were conducted through a competitive solicitation. Consistent with D.18-06-027, each program had separate capacity allocations and bid requirements. CPA issued its initial DAC-GT and CSGT RFOs on December 23, 2020. The initial RFO entailed email notification of the launch to CPA’s email distribution list and updates to CPA’s website to include information about the RFO launch. CPA hosted the 2020 DAC-GT and CSGT RFO Webinar on January 28, 2021, explaining the administration of the DAC-GT and CSGT RFOs and responding to questions from webinar participants. Interested parties were also presented with the opportunity to submit questions via email and CPA posted responses to several submitted questions on its website. In addition to issuing the initial RFOs for the DAC-GT and CSGT programs, CPA held a DAC-GT and CSGT Request for Information (“RFI”) targeted for DAC-GT and CSGT project developers and potential CSGT sponsors and site hosts. CPA responded to multiple inquiries submitted through the RFI process.

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4 D.18-06-027 at page 104, OP 17. The third program established by the Decision is the DAC-Single-family Affordable Solar Housing program which is to be managed by a statewide program administrator.
5 Id. at page 104, OP 17.
6 Id. at page 56, FN 36.
7 Resolution E-4999 at 54, Findings and Conclusions 19.
8 D.18-10-007 issued on October 18, 2018, corrected and clarified certain matters in the D.18-06-027 including application of the DAC-GT and CSGT customer bill discount and the definition of “5 miles” with regard to maximum distance between CSGT facilities and subscribing customers.
9 Resolution E-5102 at page 15, Ordering Paragraph (OP) 3.
CPA accepted offers through March 15, 2021 and evaluated offers that were complete and conforming. In accordance with Resolution E-4999, CPA utilized the cost-containment mechanism where only offers below the Commission-determined price cap were considered and assessed. Additionally, offers were only considered if the total MWs procured would be the same or less than the remaining MWs in the respective program capacity allocation. Qualitative considerations include projects meeting CPA’s preferences outlined in CPA’s Commission-approved DAC-GT and CSGT RFO Protocol, including status of project development, environmental stewardship, workforce development practices, project location, and other criteria.10

CPA notified selected bidders on May 4, 2021, including Seller. Subsequently, CPA entered into a PPA with Seller in connection with the DAC-GT program, as described below. The Minneola PPA is the only executed offtake agreement that resulted from CPA’s initial DAC-GT and CSGT RFOs.

2. Offer Selection

CPA selected Seller based on meeting the cost containment requirements pursuant to Resolution E-4999 and all other eligibility requirements outlined in CPA’s CPUC-approved DAC-GT and CSGT RFO Protocols.11 CPA executed the Minneola PPA with Seller on September 3, 2021. The executed contract is provided hereto as Attachment A, subject to the confidentiality declaration set forth below and in Attachment C. Table 1 below is a summary of the selected project that will deliver products to CPA under the Minneola PPA (“Minneola Project”).

<table>
<thead>
<tr>
<th>Table 1 – Summary of DAC-GT Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seller/Parent Company:</td>
</tr>
<tr>
<td>Project Name:</td>
</tr>
<tr>
<td>Technology:</td>
</tr>
<tr>
<td>Capacity (MW):</td>
</tr>
<tr>
<td>Estimated Average Energy</td>
</tr>
<tr>
<td>(Gigawatt Hour (GWh)/Year) in Year 1</td>
</tr>
<tr>
<td>Initial Delivery Date:</td>
</tr>
<tr>
<td>Delivery Term (Years):</td>
</tr>
<tr>
<td>Vintage (New / Existing / Repower):</td>
</tr>
<tr>
<td>Location (City and State):</td>
</tr>
</tbody>
</table>

10 See CPA Advice Letter 0006-E Attachment A.
11 See Id.
3. Remaining Capacity Available

Table 2 below summarizes how execution of the Minneola PPA will affect CPA’s allocated program capacity for the DAC-GT and CSGT programs.

Table 2 – Clean Power Alliance Remaining Program Capacity

<table>
<thead>
<tr>
<th>Program Capacity Allocation (MW)</th>
<th>DAC-GT</th>
<th>CSGT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Executed Contract Capacity from Initial RFO (MW)</td>
<td>3.0</td>
<td>0</td>
</tr>
<tr>
<td>Remaining Program Capacity (MW)</td>
<td>9.19</td>
<td>3.37</td>
</tr>
</tbody>
</table>

STANDARD CONTRACT TERMS

Under CPA’s pro forma Renewable Power Purchase Agreement, as submitted in CPA Advice Letter 0006-E and as approved by the Commission (“Pro Forma PPA”), CPA purchases energy and certain environmental attributes over a term of fifteen (15) contract years. The Pro Forma PPA requires CPA’s counterpart to submit a project development milestone timeline (as provided in the “Cover Sheet” of the Pro Forma PPA) and to provide progress reports to CPA on the project’s progress towards the achievement of the development milestones until the project begins energy deliveries (Section 2.3 of the Pro Forma PPA). The Pro Forma PPA also requires Seller to provide development security and performance security for the benefit of CPA.

Listed below is a description of changes from the Commission-approved Pro Forma PPA; a redline exhibiting the changes between the Pro Forma PPA and the Minneola PPA is included hereto as Attachment B, subject to the confidentiality declaration set forth below and in Attachment C:

- **Scheduling Coordinator**: CPA revised the Cover Sheet; added certain definitions related to Buyer-directed curtailment; adjusted Sections 3.4 and 4.1(a); removed Section 4.3; and added Exhibit D to require CPA to assume scheduling coordinator responsibilities upon the occurrence of the Commercial Operation Date, rather than Seller remaining in that role.

- **Resource Adequacy**: Since the Minneola Project was not eligible to provide Resource Adequacy benefits, CPA modified Exhibit M; removed Sections 3.8 and 3.9 and related definitions; and modified Sections 3.13, 8.1 and 11.1(a)(iii) to remove Resource Adequacy delivery requirements.

- **Termination for Lack of CPUC Approval**: CPA added Section 2.1(c) and Section 4(e) of Exhibit B along with associated definitions and removed Section 2.5 to: (1) require CPA to submit an executed DAC PPA to the CPUC for approval within 180 days following project shortlisting, and (2) allow either party to terminate the DAC PPA without penalty if CPUC approval is not obtained within 180 days of DAC PPA execution.
• **Payment Provisions:** In light of CPA assuming scheduling coordinator responsibilities, CPA adjusted compensation provisions in Sections 3.1, 3.3, 3.7, 4.5, and 4.6(e) along with related definitions to replace a contract-for-differences pricing structure with payment at the Contract Price for all energy delivered to the delivery point.

• **New Energy Products:** CPA added Section 4.1(c) to allow CPA to capture the benefit of any new or different energy-related products that may be created after DAC PPA execution.

• **REC Transfer:** CPA added CPUC non-modifiable, standard-term-and-condition REC-1 as Section 4.8(h).

• **Seller Pre-COD Liability:** To facilitate project financing, CPA adjusted Section 11.3(a) and added Section 11.9 to limit Seller’s pre-COD liability in the event of a pre-COD default by Seller.

• **COVID-19:** CPA added a representation to Section 13.1(f) to prohibit Sellers from claiming force majeure resulting from COVID-19 for delays that were known to Seller prior to PPA execution.

• **Form of Consent to Collateral Assignment:** CPA replaced much of Section 14.2 with a Form of Consent to Collateral Assignment as Exhibit O to facilitate project financing.

• **Material Permits:** CPA added Exhibit P and adjusted Section 4 of Exhibit B and Exhibit E to allow Sellers to identify material permits necessary to achieve commercial operation.

• **Supply Chain Code of Conduct:** CPA added Sections 2.2(b) and 2.2(c) and a Supply Chain Code of Conduct as Exhibit S that Sellers must adhere to ensure that the fundamental human rights of workers are protected and supply chains are free of forced labor, child labor, servitude, human trafficking, and slavery.

• **Insurance Requirements:** CPA updated the insurance requirements in Section 17.1 to better clarify when Sellers must maintain various types of insurance.

• **Other Minor, Non-Material Revisions to the DAC PPA:** CPA made edits to correct typographical errors, and other clarifications, updates, and changes in its DAC PPA. CPA believes these additional revisions are not material and have not summarized them in the specific discussion points above.

**COST RECOVERY**

The DAC-GT and CS-GT programs are funded through available Greenhouse Gas allowance proceeds and, if those funds are exhausted, through public purpose funds. CPA is authorized to recover costs through Southern California Edison’s (“SCE’s”) Disadvantaged Communities-Green

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12 DAC-GT Funding Source: D. 18-06-027, p. 54; CS-GT Funding Source: D. 18-06-027 p. 85.
Tariff Balancing Account ("DACGTBA"), which is reviewed in SCE’s annual Energy Resource Recovery Account Review proceeding. SCE will remit program funds to CPA in quarterly installments (by January 1, April 1, July 1, and October 1 of each year).

REQUEST FOR COMMISSION APPROVAL

Under the Minneola PPA, either party may terminate the agreement if “CPUC Approval,” as defined in the Minneola PPA, is not obtained within one hundred eighty days (180) following the Effective Date of the Minneola PPA. To satisfy such requirements, CPA hereby requests that the Commission approve the Minneola PPA through an Energy Division disposition within thirty (30) days of the filing of this AL.

CONFIDENTIALITY TREATMENT

CPA is seeking confidential treatment for Attachments A and B attached hereto. The information for which CPA is seeking confidential treatment is identified in the Confidentiality Declaration attached hereto as Attachment C.

A public version of this AL and attachments is being served herewith.

TIER DESIGNATION

Pursuant to General Order (GO) 96-B, Energy Industry Rule 5.2, this advice letter is submitted with a Tier 2 designation (effective after 30 days).

EFFECTIVE DATE

This AL will become effective on November 29, 2021, the 30th calendar day after the date submitted.

NOTICE

Anyone wishing to protest this AL may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received by the Energy Division and CPA no later than 20 days after the date of this AL. Protests should be submitted to:

CPUC, Energy Division  
Attention: Tariff Unit  
505 Van Ness Avenue  
San Francisco, CA 94102  
Email: EDTariffUnit@cpuc.ca.gov
In addition, protests and all other correspondence regarding this AL should be sent by letter or transmitted electronically to the attention of:

C.C. Song  
Director of Regulatory Affairs  
Clean Power Alliance of Southern California  
801 S. Grand Ave., Suite 400  
Los Angeles, CA 90017  
Email: csong@cleanpoweralliance.org

Francis Choi  
Senior Analyst, Regulatory Affairs  
Clean Power Alliance of Southern California  
801 S. Grand Ave., Suite 400  
Los Angeles, CA 90017  
Email: fchoi@cleanpoweralliance.org

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with General Rule 4 of GO 96-B, CPA is serving copies of this AL to the interested parties shown on the R. 14-07-002 service list. Pursuant to the March 20, 2020 order from Executive Director waiving the hard copy filing requirements for the AL pursuant to GO 96-B Rule 1.3, CPA will not be filing a hard copy of this AL. For changes to these service lists, please contact the Commission’s Process Office at (415) 703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.
ATTACHMENT A

Minneola PPA
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller**: Radiant BMT, LLC

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

**Description of Facility**: 3 MW-ac solar photovoltaic project

**Milestones**:

<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>Complete</td>
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<tr>
<td>Documentation of Conditional Use Permit if required:</td>
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<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X] EIR</td>
<td>7/1/22</td>
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<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
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<tr>
<td>Executed Interconnection Agreement</td>
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<tr>
<td>Financial Close</td>
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<tr>
<td>Expected Construction Start Date</td>
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<tr>
<td>Initial Synchronization</td>
<td>11/15/23</td>
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<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
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<td>Expected Date of CAISO Commercial Operation</td>
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**Delivery Term**: Fifteen (15) Contract Years

**Delivery Term Expected Energy**: 
<table>
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<th>Expected Energy (MWh)</th>
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<td>15</td>
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</table>

**Guaranteed Capacity:** 3 MW of total Facility capacity

**Guaranteed Construction Start Date:** 8/1/23

**Guaranteed Commercial Operation Date:** 12/31/23

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

<table>
<thead>
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<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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</tbody>
</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

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

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

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

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- Exhibit B  Facility Construction and Commercial Operation
- Exhibit C  Reserved
- Exhibit D  Scheduling Coordinator Responsibilities
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- Exhibit L  Form of Buyer Assignment Agreement
- Exhibit M  Material Permits
- Exhibit N  Notices
- Exhibit O  Form of Consent to Collateral Assignment
- Exhibit P  Supply Chain Code of Conduct
RENEWABLE POWER PURCHASE AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.13.

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

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

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

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

“Approved Forecast Vendor” means (x) any of the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.4(d).
“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

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

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

(b) for the same time-period as referenced in (a), Buyer or the SC for the Facility did not submit a Self-Schedule for the 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 or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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

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

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

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

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

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

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

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

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

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

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

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

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

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-12 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Damages” has the meaning set forth in Exhibit B.
“CEC” means the California Energy Commission or its successor agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Contract Price” has the meaning set forth on the Cover Sheet.

“Contract Term” has the meaning set forth in Section 2.1.
“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

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

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

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

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

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

“Curtailment Order” means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

“Deficient Month” has the meaning set forth in Section 4.8(e).
“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (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 set forth on the Cover Sheet.

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

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

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

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes and
Renewable Energy Incentives. If Seller is the Non-Defaulting Party, the value of any Renewable Energy Incentives and Tax Credits, determined on an after-tax basis, lost due to Buyer’s Event of Default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives and Tax Credits, if any, shall be included in the calculation of “Losses” which Seller may recover.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Permitted Transferee” means (i) any Affiliate of Seller, or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:
(a) A tangible net worth of not less than fifty million dollars ($50,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

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

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

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

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

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

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

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

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

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

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.
“Product” has the meaning on the Cover Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Test Energy” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.
“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

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

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

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

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

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

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

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

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

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

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

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

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

   (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

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

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

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

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

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

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

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);
(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

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

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

2.3 Development; Construction; Progress Reports.

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

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

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

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

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility in accordance with Section 3.3, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product; provided, no such resale shall relieve Buyer of any of its obligations under this Agreement. Buyer has no obligation to pay Seller for any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, Negative LMPs, or a Curtailment Order.

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

3.3 Compensation.

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

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

(c) During the Delivery Term, Seller shall receive no compensation from Buyer for Curtailed Energy or Facility Energy that is delivered in violation of a Curtailment Order.
(d) **Tax Credits.** The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

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

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

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Sections 3.6(b) and 3.13, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) allocation of any additional costs to Buyer, as set forth above;
provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

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

3.8 [Reserved].

3.9 [Reserved].

3.10 **CEC Certification and Verification.** Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification, which deadline shall be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and such delay is caused by any reason other than an act or omission of Seller, as reasonable demonstrated to Buyer. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

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

3.13 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement to obtain, maintain, convey or effectuate Buyer’s use of Green Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).
(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

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

3.14 Project Configuration.

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

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

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

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

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

4.2 **Title and Risk of Loss.**

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

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

4.3 **[Reserved].**

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

(a) **Annual Forecast of Facility Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day expected Facility Energy, by hour, for the following calendar year in a format reasonably acceptable to Buyer.

(b) **Monthly Forecast of Facility Energy.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the
beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer’s
designee (if applicable) a non-binding forecast of the hourly Facility Energy for each day of the
following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business
Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent
with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the
Expected Energy from the Facility for relevant periods) (“Day-Ahead Forecast”). A Day-Ahead
Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts
for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-
Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the Facility’s
Expected Energy for relevant periods. Seller shall provide each Day-Ahead Forecast through
Seller’s (or its SC’s) Customer Market Results Interface for the Facility. If the Customer Market
Results Interface is not available, Seller shall provide the Day-Ahead Forecast in the form of a
CSV file delivered to Buyer’s File Transfer Protocol (FTP) site as set forth in Exhibit N.

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

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

4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by
the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment
Order, or notice received from CAISO in respect of a Buyer Bid Curtailment.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail
deliveries of Facility Energy through Buyer Curtailment Orders; provided, Buyer shall compensate
Seller for Deemed Delivered Energy in accordance with Section 3.3.
(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of \((A) + (B) + (C)\), where: \((A)\) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, \((B)\) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and \((C)\) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Operating Instruction Communications.** Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

### 4.6 Reduction in Energy Delivery Obligation

(a) **Facility Maintenance.**

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

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i).
(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned during daylight hours from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

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

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

(d) Force Majeure Event. Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

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

4.8 WREGIS. Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates
associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a
schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

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

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

ARTICLE 5
TAXES

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

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

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

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

ARTICLE 7
METERING

7.1 Metering. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses or adjustments from the Facility Meter to the Delivery Point. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.
7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

**ARTICLE 8**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, and the amount of Replacement Product delivered during the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.
8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

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

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

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of
(i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, plus accrued interest, if any, if Development Security was posted as cash, less the amounts drawn in accordance with this Agreement. Seller may, at its option and at any time, exchange one permitted form of Development Security for any other permitted form of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security, plus accrued interest, if any, if such Performance Security is posted as cash. Seller may, at its option and at any time, exchange one permitted form of Performance Security for any other permitted form of Performance Security.

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

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

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

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

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

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

**ARTICLE 9**

**NOTICES**

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

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

**ARTICLE 10**

**FORCE MAJEURE**

10.1 **Definition.**

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

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

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

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.
10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; **provided,** a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

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

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

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11**

**DEFAULTS; REMEDIES; TERMINATION**

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);
(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

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

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

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

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

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

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

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

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

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement (the “Terminated Transaction”) and ends the Delivery Term effective as of the Early Termination Date;
(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall, subject to the Seller’s Development Security, 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 Development Security, then Buyer will promptly return such excess amounts to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

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

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

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

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

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

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

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

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

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.
ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

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

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

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

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

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

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

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

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

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

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

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

ARTICLE 14
ASSIGNMENT

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

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O ("Consent to Collateral Assignment").

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

(i) the assignee is a Permitted Transferee;

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

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

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

14.4 Shared Facilities; Portfolio Financing. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 Buyer Financing Assignment. Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal
prepayment financing transaction ("Buyer Assignee") at any time upon reasonable prior Notice to Seller, provided that as conditions to any such assignment: (a) Seller and Buyer (and Seller’s financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as Exhibit L ("Buyer Assignment Agreement"), such agreement not to be unreasonably withheld, conditioned, or delayed; (b) at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (i) Buyer’s Credit Rating at the time of such assignment (if applicable), and (ii) Baa3 from Moody’s and BBB- from S&P; (c) as reasonably requested by Buyer Assignee, Seller shall provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (d) as reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

ARTICLE 15
DISPUTE RESOLUTION

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

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

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

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

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

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

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

ARTICLE 17
INSURANCE

17.1 Insurance

(a) General Liability. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense (i) commercial general liability insurance,
including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars ($1,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of One Million Dollars ($1,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

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

(g) **Evidence of Insurance.** Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through (f) arises and upon annual renewal thereafter. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other
insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, such failure shall be a failure to perform a material covenant or obligation set forth in this Agreement and, as such, shall constitute an Event of Default pursuant to Section 11.1(a)(iii). With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to any Person other than the Party’s or the Party’s Affiliates’ employees, Lenders, bona fide prospective Lenders, counsel, accountants, directors, or advisors who have a demonstrable need to know such information and agree to maintain the confidentiality of such Confidential Information according to the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein. Receiving Party may also disclose Confidential Information to the extent necessary to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2
prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

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

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

18.4 Further Permitted Disclosure. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.
18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19**
**MISCELLANEOUS**

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, this Agreement may not be amended by electronic mail communications.

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

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

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

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

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

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

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

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

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

RADIANT BMT, LLC

By: __________________________
Name: _________________________
Title: __________________________

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

By: __________________________
Name: _________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Radiant Minneola

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

City: Newberry Springs

County: San Bernardino

Zip Code: 92365

Latitude and Longitude: 34.84785 x -116.77272

Facility Description: 3 MW-ac solar photovoltaic project

Delivery Point: Cool Water 115kV bus

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

Transmission Provider: Southern California Edison

Location Map:
One Line Diagram of Interconnection:

![One Line Diagram of Interconnection]

Project Layout:

![Project Layout]
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. If Seller elects to extend the Guaranteed Construction Start Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay DAMAGES, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay DAMAGES paid by Seller.

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

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

   b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay DAMAGES to Buyer for each day Seller desires to
extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

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

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

   a. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

   b. a Force Majeure Event occurs; or

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

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

   e. Buyer has not obtained CPUC Approval within the timeframe specified in Section 2.1(c), and the Parties have mutually agreed to not terminate the Agreement pursuant to Section 2.1(c), and such delay in obtaining CPUC Approval has a material impact on Buyer’s ability to initiate Construction Start prior to the Guaranteed Construction Start Date.
Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller elects to extend the Guaranteed Construction Start Date pursuant to Section 1(b) of this Exhibit B and/or if Seller elects to extend the Guaranteed Commercial Operation Date pursuant to Section 2(b) of this Exhibit B, but Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, then Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof and Seller shall be required to replenish the Development Security in an amount equal to Buyer’s draw.
EXHIBIT C
RESERVED
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

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

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*Exhibit D - 1*
Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

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

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

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

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

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

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

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

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.
“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

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

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

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

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

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

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

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:____________________________________

Its:____________________________________

Date:___________________________________
EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of _____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]  

By:______________________________  

Its:______________________________  

Date:_____________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the "Construction Start Date"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____________________________________________________________________
(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: _______________________________
Its: ______________________________

Date: ____________________________
EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [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]
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 other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.

(e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned Product.
Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to Financing Party; or

(4) delivery of a written notice by Financing Party if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; provided, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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

Financing Party

________________________

________________________

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

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

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

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

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

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

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 M

**MATERIAL PERMITS**

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## EXHIBIT N
### NOTICES

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<th><strong>RADIANT BMT, LLC</strong></th>
<th><strong>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</strong></th>
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<td>(&quot;Seller&quot;)</td>
<td>(&quot;Buyer&quot;)</td>
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<tr>
<td>Street: 2410 Fair Oaks Blvd, Ste. 110</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Sacramento, CA 95825</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Email: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
<td>E-mail: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
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<td>Attn: CPA Settlements</td>
</tr>
<tr>
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<td>Phone: (213) 269-5870</td>
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<tr>
<td>E-mail: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
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<td>Attn: Day Ahead Scheduling</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (817) 303-1104</td>
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<tr>
<td>Email: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
<td>Email: <a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
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<tbody>
<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Email: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
<td>E-mail: <a href="mailto:nkeefer@cleanpoweralliance.org">nkeefer@cleanpoweralliance.org</a></td>
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<td>Phone: (213) 269-5870</td>
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<tr>
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<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></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
In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1.  CONSENT TO ASSIGNMENT, ETC.

1.1  Consent and Agreement.

CPA hereby acknowledges:

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

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

1.2  Project Company’s Acknowledgement.

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

1.3  Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, (a) if possession of the Project is
necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

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

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall
have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

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

(b) Substitute Owner.

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

(c) No Liability.

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

1.8 Delivery of Notices.

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

1.9 Confirmations.

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

1.10 Exclusivity of Dealings.

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

1.11 No Amendments.

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

SECTION 2. PAYMENTS UNDER THE PPA

Exhibit O - 5
2.1  Payments.

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

2.2  No Offset, Etc.

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

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

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

3.1  Organization.

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

3.2  Authorization.

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

3.3  Execution and Delivery; Binding Agreements.

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

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

3.5 **No Previous Assignments.**

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

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 **Organization.**

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

4.2 **Authorization.**

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

4.3 **Execution and Delivery; Binding Agreement.**

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).
4.4  No Default or Amendment.

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

4.5  No Previous Assignments.

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

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

5.1  Authorization.

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

5.2  Execution and Delivery; Binding Agreement.

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

SECTION 6. MISCELLANEOUS

6.1  Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [Notice Section of the PPA] of the PPA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and
(c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

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>[NAME OF PROJECT COMPANY], [Legal Status of Project Company].</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</th>
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<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>[Name] [Title]</td>
<td>[Name] [Title]</td>
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<td>Date: ___________________________</td>
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<th>[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent].</th>
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<td>By:</td>
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<tr>
<td>[Name] [Title]</td>
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<tr>
<td>Date: ___________________________</td>
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</table>
SCHEDULE A

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

SUPPLY CHAIN CODE OF CONDUCT

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

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

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

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

2. Young Workers
   Child labor is not to be used in any stage of manufacturing. The term “child” refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence.
of educational partners, and protection of students’ rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

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

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

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

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

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

Redline – Minneola PPA and Pro Forma PPA
## Cover Sheet

**Seller:** Radiant BMT, LLC  
**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority  
**Description of Facility:** 3 MW-ac solar photovoltaic project  

### Milestones:

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<th>Milestone</th>
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<tr>
<td>Evidence of Site Control</td>
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<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>7/1/22</td>
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<tr>
<td>CEQA [X] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X] EIR</td>
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<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
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<td>Executed Interconnection Agreement</td>
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<td>Financial Close</td>
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<td>Expected Construction Start Date</td>
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<td>Initial Synchronization</td>
<td>11/15/23</td>
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<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
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<tr>
<td><strong>Expected Date of CAISO Commercial Operation Date</strong></td>
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**Delivery Term:** Fifteen (15) Contract Years
**Delivery Term Expected Energy:**

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**Guaranteed Capacity:** ___3 MW of total Facility capacity

**Guaranteed Construction Start Date:** 8/1/23

**Guaranteed Commercial Operation Date:** 12/31/23

**Contract Price:** The Renewable Rate Contract Price shall be:

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<td>1 – 15</td>
<td>$1,234.56/MWh (flat)</td>
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*with no escalation*
Product:

☐☒ Energy
☐☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  ☐☒ Portfolio Content Category 1
  ☐☐ Portfolio Content Category 2
  ☐☐ Portfolio Content Category 3
☐☐ Capacity Attributes
☐☐ Full Capacity Deliverability Status
  a) RA Guarantee Date: Commercial Operation Date

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

Security Amounts:

Development Security: $60/kW of Guaranteed Capacity for as available; $90/kW of Contract Capacity for dispatchable

Performance Security: $60/kW of Installed Capacity for as available; $90/kW of Contract Capacity for dispatchable 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 3.13.

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

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

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

“Approval Application” has the meaning set forth in Section 2.1(c).
“Approved Forecast Vendor” means (x) any of the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.34(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

“Buyer Curtailment Period” means the period of time, as measured using current relevant Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of 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’s Indemnified Parties” has the meaning set forth in Section 18.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Contract Price” has the meaning set forth on the Cover Sheet.

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

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

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

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

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

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

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

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

“Curtailed Energy” means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the result of the equation provided by Seller Real-Time Forecast, expressed in MWh, applicable to reasonably calculate the potential generation of the Facility as a function of Available Capacity,
“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 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.

“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 Error! Reference source not found.Error! Reference source not found..

“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 **MarketBuyer Bid Curtailment or Buyer Curtailment Period**, which amount shall be equal to the **EIRP Real-Time Forecast**, expressed in MWh, applicable to the **MarketBuyer Bid Curtailment or Buyer Curtailment Period**, whether or not Seller is participating in EIRP during the Market Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the **MarketBuyer Bid Curtailment or Buyer Curtailment Period**, as applicable; provided, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

“**Defaulting Party**” has the meaning set forth in Section 11.11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.8(e).

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

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

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

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

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

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

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

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

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

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

“**Effective Flexible Capacity**” or “**EFC**” means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.
“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point.

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

“**EIRP Forecast**” means (a) the current CAISO forecast for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time, or, if applicable (b) an alternative forecast adopted by the Parties pursuant to Section 4.3.

“**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 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 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(ab).

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

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

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

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

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

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

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.
“Fifteen Minute Market” or “FMM” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

“Future Environmental Attributes” 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 and Capacity Attributes.2

“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. [If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.] [NTD: Delete last sentence if not applicable.]

“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 3.45, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed 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 set forth on the Cover Sheet.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.
“Guaranteed Construction Start Date” means the Expected 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 4.7.4.7.

“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 initial delivery commencement of Facility Energy to Trial Operations (as defined in the Delivery Point—CAISO Tariff).

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

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

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

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

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

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

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

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


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

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.
“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

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

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

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

“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 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.

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP that is equal to or below the Negative LMP Strike Price.

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

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

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

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

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

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

“Negative LMP Strike Price” means zero dollars per MWh ($0/MWh), as such price may be revised by Buyer by providing Notice to Seller in accordance with Section 3.3(d); provided, in no event shall the Negative LMP Strike Price be greater than zero dollars per MWh ($0/MWh).

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

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

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

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

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

“Performance Measurement Period” 4.7.

“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 ($\text{150,000,000}$) 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 utility industry during the relevant time period with respect to grid-distribution-interconnected, small utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualifying CapacityReal-Time Forecast” 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 3.9(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 3.9(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 applicable4.4(d)).

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

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

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.
“Remedial Action Plan” has the meaning set forth in Section 2.4.

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

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

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

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04 01 050, 04 10 035, 05 10 042, 06 04 040, 06 06 064, 06 07 031, 06 07 031, 07 06 029, 08 06 031, 09 06 028, 10 06 036, 11 06 022, 12 06 025, 13 06 024 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” has a corollary meaning.

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

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

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

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

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

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

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

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

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

“Settlement Point” means the Facility’s PNode, DLAP, SP 15, to be assigned by CAISO in New Resource Implementation process prior to the Commercial Operation Date.

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

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

“Station Use” means:

(a) The Energy (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;

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

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

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

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

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

“Terminated Transaction” has the meaning set forth in Section 11.2.
“Termination Payment” has the meaning set forth in Section 11.3.

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

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

“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 to or from the Delivery Point.

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

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

“Ultimate Parent” means ________________, a [State of organization] [Type of entity]. Radiant BMT, LLC, a California limited liability company.

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

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

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

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

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

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

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions (“Contract Term”); provided, subject to Buyer’s obligations in Section Error! Reference source not found., 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 Error! Reference source not found., and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

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

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

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

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

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

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

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

2.3 Development; Construction; Progress Reports.

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

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

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

2.5 CPUC Approval. Within one hundred eighty (180) days after Seller was notified by Buyer of shortlist status related to the relevant Request for Offer (RFO), Buyer shall file with the CPUC the appropriate request for CPUC approval (“CPUC Approval”). Buyer shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which contains findings required for CPUC Approval with conditions or modifications unacceptable to Buyer. Buyer and Seller obligations under this PPA will only become effective upon Buyer obtaining CPUC Approval. Failure to obtain CPUC Approval in accordance with this Section 2.5 will not be deemed to be a failure of Seller to install the Project or a failure of Buyer to purchase or receive the Product, and will not be or cause an Event of Default by either Party.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price 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 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. Subject to Buyer’s obligation to purchase Capacity Attributes in accordance with this Section 3.1, Buyer has no obligation to pay Seller for any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, Negative LMPs, or a Curtailment Order.
3.2 Sale of Green Attributes. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 Compensation.

(a) During the Delivery Term, Buyer shall pay Seller the following amounts for each MWh of Facility Energy and plus Deemed Delivered Energy during a Contract Year, if any, up to one hundred fifteen percent (115%) of the amount of Expected Energy for such each Contract Year. If at any point in any Contract Year (“Excess MWh”):

(i) For each MWh, the amount of Facility Energy in each 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.

(ii) If during any Settlement Interval, the difference of (A) the Contract Price, minus (B) the Day Ahead Market LMP applicable to Seller delivers Facility Energy in excess of the Settlement Point for such product of the Guaranteed Capacity and the duration of the Settlement Interval; provided, (x) if the Day Ahead Market LMP, expressed in hours (“Excess MWh”), then the price applicable to the Settlement Point for all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is less than the a Negative LMP Strike Price, then during such Day Ahead Market LMP value will be deemed to be the Negative LMP Strike Price for purposes of this Section 3.3(a)(i), and (y) if the result of the difference of (A) minus (B) above results in a negative value, then Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such result (which payment may be applied as a credit to Buyer on Seller’s monthly invoice); and

(b) During the Delivery Term, Buyer shall pay Seller the following amounts for each Excess MWh of Facility Energy and Deemed Delivered Energy during a Contract Year in excess of one hundred fifteen percent (115%) of the Expected Energy for such Contract Year:

(i) For each MWh of Facility Energy in each Settlement Interval, zero dollars per MWh ($0/MWh); and
(ii) For each MWh of Deemed Delivered Energy in each Settlement Interval, zero dollars per MWh ($0/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) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price by providing Notice to Seller at least five (5) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; provided, the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh ($0/MWh).

(e)(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. Seller shall use commercially reasonable efforts to deliver the Scheduled Energy. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy and that to the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Seller.

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

3.6 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), and Sections 3.6.6and 3.13, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for
such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) 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.

3.7 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, Buyer shall have the option to purchase from Seller all Test Energy and any associated Products on an as available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller for each MWh of Test Energy an amount equal to (a) seventy percent (70%) of the Contract Price (the “Test Energy Rate”), minus (b) the FMM LMP applicable to the Delivery Point for such Settlement Interval. If Buyer does not exercise the option within ten (10) days after receipt of Notice from Seller, Seller shall have the right to sell all or any portion of the Product, including any Test Energy, generated by the Facility prior to the Commercial Operation Date to one or more third parties and retain all resulting revenue. The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 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. Seller retains all rights to Test Energy.

3.8 [Reserved].

(a) Throughout the Delivery Term and subject to Section 3.13, 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 3.13, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.13, 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 3.13, 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.

3.9 **Resource Adequacy Failure**

(c) RA Deficiency Determination. Notwithstanding Seller’s obligations set forth in Section 4.3 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 3.9(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(d) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“CPM Price”); provided, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, not to exceed twenty-five percent (25%) of the Qualifying Capacity amount in any such RA Shortfall Month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a 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.

3.10 **CEC Certification and Verification.** Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification, which deadline shall be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and such delay is caused by any reason other than an act or omission of Seller, as reasonable demonstrated to Buyer. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.
3.11 **Eligibility.** Subject to Section Error! Reference source not found.3, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

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

3.13 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement, including with respect to obtaining, maintaining, conveying, maintain, convey 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 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

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

3.14 **Project Configuration.**

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

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**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

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

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

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

4.2 **Title and Risk of Loss.**

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

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

4.3 **Scheduling Coordinator Responsibilities.** [Reserved].

(c) **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.

(d) **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 with the EIRP Forecast. Seller’s bids into the Day Ahead Market and the Real Time Market shall be consistent with the EIRP Forecast and at or below the Negative LMP Strike Price and consistent with Prudent Operating Practice.

(e) **EIRP Forecast.** If either Party determines that an alternative forecast is more accurate than the EIRP Forecast, based upon no less than six months of recorded data comparing the alternative forecast, the EIRP Forecast, and the actual Facility Energy data, then, subject to the other Party’s written consent, such alternative forecast may be used in place of the EIRP forecast. Any such successor alternative forecast will itself be subject to periodic review by the Parties under the foregoing criteria. If the Parties are not able to agree upon a commercially reasonable replacement forecast, either Party may submit the matter to Dispute Resolution in accordance with Article 16 of this Agreement. Notwithstanding the foregoing, any successor alternative forecast will be used for determining Deemed Delivered Energy on a prospective basis only.

(f) **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, that, 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.

(g) 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, including the possibility of incorporating Inter SC Trades in the Day-Ahead Market.

(h) 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.

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

(a) Annual Forecast of Facility Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day expected Facility Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Facility Energy. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer’s designee (if applicable) a non-binding forecast of the hourly Facility Energy for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the Expected Energy from the Facility for relevant periods (“Day-Ahead Forecast”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the Facility’s Expected Energy for relevant periods. Seller shall provide each Day-Ahead Forecast through Seller’s (or its SC’s) Customer Market Results Interface for the Facility. If the Customer Market Results Interface is not available, Seller shall provide the Day-Ahead Forecast in the form of a CSV file delivered to Buyer’s File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) Real-Time Forecast Updates. Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System (“OMS”) based on CAISO protocols, and (ii) with respect to hourly expected Energy quantities, via the Facility’s EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer and, in the case of Energy forecasts, the Approved Forecast Vendor. (“Real-Time Forecast”). Among other information provided through such procedures, Buyer shall be notified
if, past the deadlines for Day-Ahead Forecasts provided in Section 4.34(a), there are change(s) in such Day-Ahead Forecasts of one (1) MW / (1) MWh or more, as applicable, in the Available Generating Capacity or the hourly expected Energy, in any case whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause, including (as appropriate) information regarding the beginning date and time of any event resulting in the change in Available Generating Capacity, the expected end date and time of any such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, 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 and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer’s SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and directed by
Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(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). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

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

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

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

(d) **Force Majeure Event.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
(e) **Negative LMP.** Seller shall be permitted, but not obligated, in its sole discretion to reduce deliveries of Product during any period in which there is a Negative LMP.

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

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

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer all Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by three times (3x) the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2, Non-modifiable. D.11-01-025]
(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

ARTICLE 5
TAXES

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

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

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

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

**ARTICLE 7**
**METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses or adjustments from the Facility Meter to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’s Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the Facility Meter reads from the CAISO Operational Meter Analysis and Reporting (OMARMarket Results Interface-Sentlements (MRI-S) web and/or directly from the Facility Meter.

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

8.1 Invoicing. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, and the amount of Replacement Product or Replacement RA delivered during the preceding month; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any invoices.

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

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

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

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

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, plus accrued interest, if any, if Development Security was posted as cash, less the amounts drawn in accordance with this Agreement. Seller may, at its option and at any time, exchange one permitted form of Development Security for any other permitted form of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under
this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security, plus accrued interest, if any, if such Performance Security is posted as cash. Seller may, at its option and at any time, exchange one permitted form of Performance Security for any other permitted form of Performance Security.

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

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

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

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

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

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

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

ARTICLE 9
NOTICES

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

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

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

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

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

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

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

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

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

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that such delays did not result from Seller’s actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. **Upon such termination, and notwithstanding anything to the contrary in Exhibit B, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1** 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 Error! Reference source not found.; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.9, 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 Error! Reference source not found.) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.88.8, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

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

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

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment 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;

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be subject to the Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no If the Development Security amounts owed 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 Damage Payment shall be owed to Seller and shall equal (A) the sum of the all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller between or its Affiliates, from the Effective Date and through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without
duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder. less (B) the fair market value (determined in a commercially reasonable manner) of (A by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer’s sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller’s assets if sold individually, or (Bb) 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 Fair market value shall be based on the value of Seller’s assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There shall be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

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

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

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 16.15.

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 to 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 HEREFOR, 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 HEREFOR, 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 3.9, 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 [Type of entity] 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 will be located in the State of and connected electrically to a circuit, load, or substation within Southern California Edison’s service territory, and be located within an eligible DAC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon execute a consent to collateral assignment of this Agreement (“substantially in the form attached hereto as Exhibit O (“Consent to Collateral Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

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

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

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

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

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

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

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

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

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

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

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

(ii) — Not assume this Agreement;

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

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

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

(i) the assignee is a Permitted Transferee;

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

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

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

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (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 reasonable prior Notice of to Seller, *provided* that as conditions to any such assignment, which Notice must include: (a) a proposed Seller and Buyer (and Seller’s financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement substantially inbased on the initial form attached hereto as Exhibit L ("Buyer Assignment Agreement"), provided that such agreement not to be unreasonably withheld, conditioned, or delayed; (b) at the time of such assignment, such Buyer Assignee has a
Credit Rating equal to the higher of (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; (c) as reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5. As reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

ARTICLE 15
DISPUTE RESOLUTION

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

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

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

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

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

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

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 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 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, 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.** Employers’ Liability insurance shall not be 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, if it has employees, Seller shall also maintain, or cause to be maintained, at all times during the Contract Term its sole expense 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, 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.** Seller shall maintain or cause to be maintained 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 all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage 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 18, 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. Such failure shall be a failure to perform a material covenant or obligation set forth in this Agreement and, as such, shall constitute an Event of Default pursuant to Section 11.1(a)(iii). With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 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.

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### 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 (any Person other than the Party’s or the Party’s Affiliates’ employees, Lenders, bona fide prospective Lenders, counsel, accountants, directors, or advisors, or any such representatives of a Party’s Affiliates, who have a demonstrable need to know such information and have agreed to keep such Confidential Information according to the terms confidential) except in order hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein. Receiving Party
may also disclose Confidential Information to the extent necessary to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

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

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

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

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

**ARTICLE 19**

**MISCELLANEOUS**

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

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

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

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, 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 1615. 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
RADIANT BMT, LLC

By: __________________________
Name: ________________________
Title: _________________________

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

By: __________________________
Name: ________________________
Title: _________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Radiant Minneola

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

City: Newberry Springs

County: San Bernardino

Zip Code: 92365

Latitude and Longitude: 34.84785 x -116.77272

Facility Description: 3 MW-ac solar photovoltaic project

Delivery Point: Cool Water 115kV bus

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

Transmission Provider: Southern California Edison

Additional Information:
Location Map:

One Line Diagram of Interconnection:
Project Layout:
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

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

   b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

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

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

   b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to
extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On If Seller elects to extend the Guaranteed Commercial Operation Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

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

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

   a. Seller has not acquired 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 the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

   b. a Force Majeure Event occurs; or

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

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

   e. Buyer has not obtained CPUC Approval within the timeframe specified in Section 2.1(c), and the Parties have mutually agreed to not terminate the Agreement pursuant to Section 2.1(c), and such delay in obtaining CPUC Approval has a
Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller elects to extend the Guaranteed Construction Start Date pursuant to Section 1(b) of this Exhibit B and/or if Seller elects to extend the Guaranteed Commercial Operation Date pursuant to Section 2(b) of this Exhibit B, but Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, then Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof and Seller shall be required to replenish the Development Security in an amount equal to Buyer’s draw.
EXHIBIT C
RESERVED
SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

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

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

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

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

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

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

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F—1
MONTHLY EXPECTED AVAILABLE 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 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 [NTD: If the Contract Price has an annual escalator, this will be the average of the Contract Price of the applicable two years in the Performance Measurement Period.]
- \(E\) = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period
- \(F\) = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is \((C - D)\)

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

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

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.
“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

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

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

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

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

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

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

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

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:_____________________________
EXHIBIT I
FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ________ day of ______________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:____________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the "Construction Start Date"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____________________________________________________________________
(such description shall amend the description of the Site in Exhibit A of the Agreement).

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

[SELLER ENTITY]

By: ________________________________
Its: ________________________________

Date: ________________________________
EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [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] (the “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 [XXXX] 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 representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such
other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
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 other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided, (i) PPA Buyer and PPA Seller shall provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.

(e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing
Party has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to Financing Party; or

(4) delivery of a written notice by Financing Party if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period; provided, (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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

Financing Party

____________________

____________________

Email: ______________________

Exhibit L – 2
4. **Miscellaneous.** Sections [ ] [Severability], [ ] [Counterparts], [ ] [Amendments] and [ ] [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

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

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

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

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

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

By: ……………………………………..

Name:        Name:
Title:        Title:

PPA BUYER

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: 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.\(^1\)

Assigned Product: [Describe and define]

Further Information: [Include, if any]\(^2\)

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

---

\(^1\) The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.

\(^2\) To include transfer and settlement mechanics for RECs, as applicable.
EXHIBIT M
FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [_______] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.7] [3.9(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

<table>
<thead>
<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>Resource Type</td>
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<td>Path 26 (North or South)</td>
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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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<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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1. To be repeated for each unit if more than one.

Exhibit M — 1
[SELLER ENTITY]

By: __________________________
Its: __________________________

Date: __________________________

**MATERIAL PERMITS**

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<td>2</td>
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## EXHIBIT N

### NOTICES

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<tr>
<th><strong>[SELLER'S NAME]</strong> RADIANT BMT, LLC</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(&quot;Seller&quot;)</strong></td>
<td></td>
</tr>
<tr>
<td>All Notices:</td>
<td>All Notices:</td>
</tr>
<tr>
<td>Street: 2410 Fair Oaks Blvd, Ste. 110</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Sacramento, CA 95825</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:Tbardacke@cleanpoweralliance.org">Tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
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<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: CPA Settlements</td>
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<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
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<tr>
<td>E-mail: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
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<tr>
<td>Scheduling:</td>
<td>Scheduling: TBD</td>
</tr>
<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: Day Ahead Scheduling</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (817) 303-1104</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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<tr>
<td>Email: <a href="mailto:tthorner@jtn-energy.com">tthorner@jtn-energy.com</a></td>
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<tr>
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<tr>
<td>Attn: Todd Thorner</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone: (415) 652-1627</td>
<td>Phone: (213) 269-5870</td>
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<tr>
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<td>Attn: Vice President, Power Supply</td>
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<td>BNK: River City Bank</td>
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<td><strong>SELLER’S NAME/RADIANT BMT, LLC</strong> (&quot;Seller&quot;)</td>
<td>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</td>
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| E-mail: | }
EXHIBIT O

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

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

RECITALS

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

A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Storage Units (the “Project”) and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);

C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT
In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

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

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

1.2 Project Company’s Acknowledgement.

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

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of sixty (60) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such PPA Default from CPA to cure such PPA Default; provided, (a) if possession of the Project is
necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

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

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall
have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

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

(b) Substitute Owner.

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

(c) No Liability.

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

1.8 Delivery of Notices.

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

1.9 Confirmations.

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

1.10 Exclusivity of Dealings.

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

1.11 No Amendments.

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

SECTION 2. PAYMENTS UNDER THE PPA

Exhibit O - 5
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>[NAME OF PROJECT COMPANY], [Legal Status of Project Company]</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
<td>By:</td>
</tr>
<tr>
<td>[Name] [Title]</td>
<td>[Name] [Title]</td>
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<tr>
<td>Date: ______________________</td>
<td>Date: ______________________</td>
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</table>

<table>
<thead>
<tr>
<th>[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent]</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
</tr>
<tr>
<td>[Name] [Title]</td>
</tr>
<tr>
<td>Date: ______________________</td>
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</tbody>
</table>
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
Supply Chain Code of Conduct

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

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

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

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

2. Young Workers
   Child labor is not to be used in any stage of manufacturing. The term “child” refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence.
of educational partners, and protection of students’ rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

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

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

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

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

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

Confidentiality Declaration
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
DECLARATION OF TED BARDACKE IN SUPPORT OF CONFIDENTIAL TREATMENT

I, Ted Bardacke, declare as follows:

1. I am an officer representing the Clean Power Alliance of Southern California (“CPA”) in this matter. I am authorized to make this declaration on behalf of CPA. The statements in this declaration are based on my knowledge, information, or belief.

2. I have reviewed or caused to be reviewed CPA’s Renewable Power Purchase Agreement with Radiant BMT, LLC, dated September 3, 2021 (“Minneola PPA”). I have also reviewed or caused to be reviewed CPA’s Advice Letter 0010-E, dated October 29, 2021 (“AL”).

3. CPA is also providing the Redline of Minneola PPA and Pro Forma PPA (“Redline Minneola PPA”).

4. Those portions of the Confidential Minneola PPA and Redline Minneola PPA identified in Table 1, below and marked in dark gray in the attached Excel file (“Confidential PPA Information”) (Confidential PPA Information shall be referred to as “CPA Confidential Information”) are eligible for confidential treatment and protection. CPA provides a public version (fully redacted) and a confidential version (with the gray highlights) of the CPA Confidential Information.

5. Table 1: Identification of Confidential PPA Information

<table>
<thead>
<tr>
<th>PPA Contract Information</th>
<th>Type of Data</th>
<th>Matrix Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Contract Price</td>
<td>• Contract Price</td>
<td>C) Bilateral Contracts</td>
</tr>
<tr>
<td>• Milestone dates related to Financial Close and Construction Start</td>
<td>• Milestone Dates</td>
<td></td>
</tr>
<tr>
<td>• Expected Energy subsequent to Year 1</td>
<td>• Expected Generation</td>
<td></td>
</tr>
<tr>
<td>• Pre-Commercial Operation Date Liability provisions</td>
<td>• Financial Terms</td>
<td></td>
</tr>
</tbody>
</table>

5. CPA requests that the Confidential PPA Information be kept under seal, exempt from disclosure, and withheld pursuant to Commission General Order 66-D; Public Utilities Code Section 583; California Government (“Govt.”) Code Section 6255; Govt. Code 6245(k), Evidence Code Section 1060, and Civil Code Section 3254, et seq, as well as Decision (“D.”) 06-06-066 and D.08-04-023 and the Matrix of Allowed Confidential Treatment for Energy Service Provider Data (“ESP Matrix”) attached as Appendix B to the latter decision, as explained below.

6. The CPA Confidential Information for which CPA requests confidential treatment and thereby protection from public disclosure are the types of information and correspond to a category or categories specified in D.06-06-066 and D.08-04-023 and the ESP Matrix.

7. In addition to the ESP Matrix and D.06-06-066/D.08-04-023, the CPA Confidential Information contains confidential and market-sensitive information and disclosure of this information would place CPA and its counterparties at a market disadvantage, including through the release of proprietary or trade secret information. Therefore, the CPA Confidential Information are exempt from public disclosure under Govt. Code Sections 6245(k), Evidence Code Section
1060, and Civil Code Section 3254, et seq.

8. The CPA Confidential Information is also exempt under Govt. Code Section 6255 because publicly releasing this information could provide market participants and market competitors insight into CPA’s procurement position and strategy, which would unfairly undermine or undercut CPA’s bargaining power. The harm to CPA’s bargaining power could impact CPA’s rates and customers leading to harm to the public. Therefore, the public interest in not disclosing this information outweighs the public interest in disclosure.

9. The data for which CPA is claiming confidentiality is not already public.

10. The confidentiality of the data for which CPA is claiming confidentiality would not be compromised if it were first aggregated with the equivalent data of all other load serving entities before being made public. Other than by the aforesaid process, the data cannot be aggregated, redacted, summarized, masked, or otherwise protected in a way that allows partial disclosure.

11. CPA requests that all Confidential information be kept confidential and exempt from disclosure in accordance with Commission General Order 66-D and pursuant to the California Public Records Act.

Declared under penalty of perjury that the aforesaid is true of my knowledge, information, or belief.

Dated: October 29, 2021

Ted Bardacke
Ted Bardacke
Executive Director
Clean Power Alliance of Southern California
801 S Grand Ave, Suite 400
Los Angeles, CA 90017
310-709-2281

Signature: [Signature]
Email: tbardacke@cleanpoweralliance.org