

EXCLUSIVITY AGREEMENT



[Date]

[Respondent Address]

Attention:

Subject: Exclusivity Agreement for PPA Negotiation

Regarding: [Project Name]

Dear Respondent:

Clean Power Alliance of Southern California (“CPA”) is pleased to confirm that the offer submitted by _____, (“Respondent”) for the [Project Name] (“Project”) (the “Offer”) in the recent 2022 DAC-GT and CS-GT Request for Offers (“RFO”) has been placed on the shortlist for further negotiations. If you wish to proceed with negotiations for a power purchase agreement (“PPA”) under the terms and conditions set forth below (the “Exclusivity Agreement”), please countersign where provided below and return it to procurement@cleanpoweralliance.org no later than seven (7) business days after the date set forth above, along with the required items for short-listed Offers, as described in the RFO protocol.

I. Representations and Warranties

In accepting a position on the shortlist, Respondent hereby makes the following representations and warranties:

- (i) Respondent has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to CPA in response to RFO with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the RFO; and
- (ii) Respondent will promptly notify CPA of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Offer submission to CPA’s acceptance of the Offer, as evidenced by CPA’s execution of PPA(s), or Respondent’s withdrawal of the Offer.

Respondent understands and agrees that any breach by Respondent of the above representations and warranties is grounds for immediate disqualification of Respondent from the RFO.

II. Exclusivity

In consideration of its shortlist position, Respondent hereby grants CPA exclusivity with respect to the Offer until the earlier of the following events (the “Exclusivity Deadline”):

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1. CPA's termination of negotiations of the PPA;
2. Ninety (90) days after the date of this Exclusivity Agreement.

Respondent agrees prior to the Exclusivity Deadline it shall not enter into any agreements nor otherwise discuss the sale of output of the Project associated with the Offer with any third party under which it or its affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output of the Project associated with the Offer. The Exclusivity Deadline may be extended by mutual agreement by the parties.

As a condition of CPA's obligations under this Shortlist Acceptance Letter, Respondent agrees to provide CPA with a deposit in the form of either (a) cash or (b) a letter of credit in a form reasonably acceptable to CPA in the amount of **\$3.00/kW times the Project's guaranteed capacity** (the "**Shortlist Deposit**") within 3 business days of Respondent's countersignature of this Shortlist Acceptance Letter. "**Letter of Credit**" means an irrevocable standby letter of credit, in a form reasonably acceptable to CPA, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by CPA, and (B) it is acceptable to CPA in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody's, with a stable outlook designation. All costs of the Letter of Credit shall be borne by Respondent. The Letter of Credit should be sent by overnight delivery to:

CPA Attn: Alexandra Caryotakis
Clean Power Alliance of Southern California
801 S Grand, Suite 400
Los Angeles, CA 90017

The Shortlist Deposit will be promptly returned to Respondent in its entirety under one or more of the following conditions: (i) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (ii) CPA's rejection of Respondent's Offer following shortlist selection, (iii) failure of both CPA and the Respondent to agree on the terms of the Offer or PPA, or (iv) CPA's termination of the RFO process. Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and CPA shall have the right to the Shortlist Deposit in its entirety without further notice to Respondent if (i) material misrepresentations of information related to the Offer are identified during the negotiating process, (ii) Respondent fails to comply with the terms and conditions of this Shortlist Acceptance Letter or the RFO, including the RFO Protocol, (iii) Respondent unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer prior to the Exclusivity Deadline, or (iv) prior to the Exclusivity Deadline, Respondent enters into discussions with any third party under which such third party, or any of such third party's affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output of the Project associated with the Offer.

Respondent agrees that CPA will not be obligated to enter into any transaction with Respondent until a final negotiated PPA has been submitted for, and received, approval from the board of CPA, as applicable, and fully executed by the parties thereto.

Very truly yours,

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
a California Joint Powers Authority

By: _____
Name: _____

EXCLUSIVITY AGREEMENT

Title: _____

Acknowledged and Agreed:

Respondent

By: _____

Name: _____

Title: _____

Date: _____