

[Date]

Clean Power Alliance of Southern California
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017

[Counterparty Name]
[Counterparty Address]
[City, State, Zip]

RE: Mutual Non-Disclosure Agreement

In connection with a potential transaction from the CPA 2022 DAC-GT and CS-GT Request for Offers (“**Transaction**,”) between [Name of Counterparty] (“**Company**”) and the Clean Power Alliance of Southern California (“**CPA**”), either Party may make available to the other Party and its Representatives certain information, which is non-public, confidential and/or proprietary in nature. As a condition to any such information being furnished, the Parties agrees that they will, and will cause their respective Representatives to, treat any such information in accordance with, and otherwise comply with, the terms and conditions set forth in this letter agreement (this “**Agreement**”) effective as of the Effective Date, as defined below.

1. Certain Defined Terms.

(a) The term “**Affiliate**” shall mean any company, corporation, or other entity, which controls, is controlled by, or is under common control with a Party now and shall be considered an Affiliate only so long as the ownership or control, directly or indirectly, meets the conditions set forth herein; provided that any “Confidential Information” provided by or about an Affiliate prior to its cessation as an Affiliate shall remain subject to the terms of this Agreement. For purposes of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

(b) The term “**Confidential Information**” means all confidential, proprietary, or sensitive information including, without limitation, trade secrets, know-how, formulae, processes, ideas, inventions (whether or not patentable), schematics, and other technical, business, financial, company and product development information or data as well as other sensitive or proprietary information or data (whether or not reduced to writing), which is disclosed or made available by the Disclosing Party or Disclosing Party’s Affiliates to the Receiving Party or Receiving Party’s Affiliates and (a) if disclosed orally, is orally identified at the time of disclosure or promptly thereafter in writing or electronically as confidential or proprietary, or (b) that, regardless of the form of disclosure, whether oral, written, graphic, photographic, electronic, visual or otherwise, including but not limited to data, documents, reports, financial statements, marketing data, client information, correspondence and communications, or should reasonably have been understood by the Receiving Party because of legends or other markings, the circumstances of disclosure, or the nature of the information itself to be proprietary or confidential to the Disclosing Party, an Affiliate of the Disclosing Party or to a third party. “**Confidential Information**” includes all copies of such information and all memoranda, notes, reports, analyses, forecasts, summaries, data, compilations, studies and other materials containing, reflecting, interpreting or based upon, in whole or in part, any Confidential Information. The Parties acknowledge and agree that the “**Confidential Information**” is subject to the requirements of the California Public Records Act

(Government Code Section 6250 et seq.) (“**CPRA**”). In that regard, the Parties agree and acknowledge that no waiver, whether express or implied, of any privilege, exemption, or prohibition from disclosure pursuant to federal or state law is intended.

Notwithstanding the foregoing, the term “**Confidential Information**” does not include information that the Receiving Party can demonstrate (i) has become available to the public other than as a result of a disclosure by the Receiving Party or its Representatives in breach of the terms hereof, (ii) was in Receiving Party’s possession prior to first being furnished to Receiving Party or any of its Representatives by or on behalf of the Disclosing Party or any of its Representatives, provided that, to the best knowledge of Receiving Party or its Representatives, as the case may be, the source of such information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Disclosing Party or any other person that prohibited such disclosure, (iii) has become available to Receiving Party or its Representatives from a source other than Disclosing Party or its Representatives, provided that, to the best knowledge of Receiving Party or its Representatives, as the case may be, the source of such information was not bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Disclosing Party or any other person that prohibited such disclosure, or (iv) has already been or is hereafter independently developed by Receiving Party or its Representatives by persons who had no access to, and developed such information without reference to or reliance upon, the Confidential Information and is evidenced by documentation that was in Receiving Party’s possession prior to disclosure.

(c) The term “**Disclosing Party**” shall mean the Party or its Representatives that discloses or otherwise furnishes “Confidential Information” to the Receiving Party, whether the Confidential Information is prepared by the Party or its Representatives.

(d) The term “**Receiving Party**” shall mean the Party or its Representatives that receives “Confidential Information,” as defined herein, from the Disclosing Party whether prepared or furnished by the Disclosing Party.

(e) As used herein, “**Party**” shall refer to CPA or Company, individually, and “**Parties**” shall refer to CPA and Company, collectively.

(f) The term “**Representative**” means, as to any person, such person’s affiliates, and its and their respective directors, officers, managers, partners, members, employees, agents, and advisors (including, without limitation, financial advisors, auditors, consultants, legal counsel, accountants, or lenders, provided that in no event will lenders include potential lenders) and the term “**person**” means any natural person or legal entity, including, without limitation, any corporation, general or limited partnership, limited liability company, trust, or other entity or company, that has a legitimate business reason to access the Confidential Information and who agrees in writing to abide by the terms and conditions of this Agreement.

2. Use and Non-Disclosure of Confidential Information. Receiving Party recognizes and acknowledges the legal, commercial, and competitive value and confidential nature of the Confidential Information and the damage that could result to Disclosing Party if any information contained therein is disclosed to a third party. In consideration of the Disclosing Party’s disclosure of the Confidential Information to the Receiving Party, the Receiving Party agrees that it and its Representatives (a) will treat all Confidential Information as strictly confidential; (b) will only use the Confidential Information as necessary for the Transaction and for no other purpose, including, without limitation, in any way detrimental to the Disclosing Party,

(c) will protect all Confidential Information, whether in storage or in use, with the same degree of care as the Receiving Party uses to protect its own Confidential Information against public disclosure, but in no case with less than reasonable care; (d) will disclose Confidential Information only to such Representatives of the Receiving Party and its Affiliates who need to know such Confidential Information for the Purpose, provided such Representatives are informed of the confidential nature of such Confidential Information and the terms of this Agreement prior to disclosure and provided further that the Receiving Party shall be responsible in the event of such Representative's breach of this Agreement as if the Receiving Party had committed such breach; and (e) will not reverse engineer any such Confidential Information. In addition, except upon mutual written agreement, or as may be required by law, neither Party to this Agreement shall in any way or in any form disclose the discussions that gave rise to this Agreement or the fact that there have been, or will be, discussions or negotiations covered by this Agreement.

Notwithstanding the foregoing, Confidential Information may be disclosed (x) with Disclosing Party's prior written consent, or (y) in accordance with Paragraph 3 below.

3. Required Disclosure. If either Party is requested or required pursuant to a law, including the CPRA, by a court, or by an administrative or regulatory agency of competent jurisdiction to disclose any Confidential Information, that Party must promptly notify the other Party of the request for disclosure and, absent the prior written consent of the non-disclosing Party to the disclosure, will take lawful steps to protect against the disclosure of any Confidential Information. If the non-disclosing Party takes no action after receiving the foregoing notice, the Party receiving the disclosure request shall, at its sole discretion, be permitted to comply with the request or requirement. If the non-disclosing Party takes action or attempts to take action after receiving the foregoing notice, the non-disclosing Party shall proceed with any such action, at the non-disclosing Party's sole expense, and agrees to indemnify and hold harmless the Party receiving the disclosure request from any claims, liability, award of attorneys' fees, damages, costs, or expenses incurred or awarded in connection with any judgment, determination, order, writ, injunction, decision, or ruling requiring disclosure of the Confidential Information.

4. Ownership, Return, and Destruction of Confidential Information. All Confidential Information provided pursuant to this Agreement will remain the property of the Disclosing Party, and neither this Agreement nor any disclosure of Confidential Information pursuant hereto shall be construed as granting (expressly or by implication) to Receiving Party or any of its Representatives any license or other intellectual property right with respect to any of the Confidential Information. At any time after the Term of this Agreement, at the request of Disclosing Party, in its sole discretion and for any reason or no reason, Receiving Party will promptly, at its option, either destroy or deliver to Disclosing Party all Confidential Information and cause its Representatives to do the same (and if requested by Disclosing Party, will confirm in writing compliance with this provision to Disclosing Party within 15 calendar days of the foregoing decision or request). Notwithstanding the foregoing, Receiving Party and its Representatives may retain data or records in electronic form containing Confidential Information for the purposes of backup, recovery, contingency planning or business continuity planning, so long as (x) such data or records, to the extent not permanently deleted or overwritten in the ordinary course of business, are not accessible in the ordinary course of business and are not accessed except as required for backup, recovery, contingency planning or business continuity purposes and (y) to the extent such data or records are restored or otherwise become accessible, they are permanently deleted. Notwithstanding the return or destruction of the Confidential Information, Receiving Party and its Representatives will continue to be bound by the obligations of confidentiality and the other applicable obligations and agreements under this Agreement.

5. General.

(a) Term. This Agreement shall be effective upon the date that both Parties have signed this Agreement (the “**Effective Date**”) and will remain in effect for three (3) years (“**Term**”).

(b) No Warranty. The Receiving Party acknowledges that the Disclosing Party has neither made any representations nor given any warranties as to the accuracy or completeness of the Confidential Information for the Receiving Party’s purposes. The Receiving Party agrees that the Disclosing Party shall not by virtue of this Agreement have any liability or responsibility for errors or omissions in, or any decisions made by the Receiving Party in reliance on, any Confidential Information disclosed under this Agreement. CONFIDENTIAL INFORMATION IS PROVIDED ON AN “AS-IS” BASIS AND DISCLOSING PARTY EXPRESSLY DISCLAIMS ANY WARRANTIES WITH RESPECT TO ACCURACY, RELIABILITY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

(c) Notice. The Receiving Party will notify the Disclosing Party in writing promptly upon the occurrence of any unauthorized release of Confidential Information or breach of this Agreement of which it is aware.

This notice and any notice required herein shall be provided both by electronic mail and U.S. Mail to the following individuals at the following address:

CPA: Natasha Keefer, Vice President, Power Supply
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
Email: nkeefe@cleanpoweralliance.org

With a copy to
Nancy Whang, General Counsel
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
Email: nwhang@cleanpoweralliance.org

Company: [name] and [address and email address]

(d) Disclaimer. This Agreement is neither intended to create, nor shall it be construed as creating, (i) a joint venture, partnership or other form of business association between the Parties, (ii) an obligation to buy or sell products using or incorporating the Confidential Information, (iii) an implied or express license grant from either Party to the other, (iv) any obligation to continue discussions or negotiations with respect to any potential agreement between the Parties or (v) an agreement to enter into any agreement.

(e) Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

(f) Assignment; Binding Effect. No Party may assign this Agreement or any of its rights, interests or obligations hereunder without the prior written consent of the other

Party, which shall not be unreasonably withheld, and any purported assignment by a Party without prior written consent of the other Party will be null and void and not binding on such other Party. Subject to the preceding sentence, all of the terms, agreements, covenants, representations, warranties and obligations of this Agreement are binding upon, and inure to the benefit of and are enforceable by, the Parties and their respective successors and assigns.

(g) Equitable Relief; Remedies. Receiving Party acknowledges and agrees that Disclosing Party would be damaged irreparably and would not have an adequate remedy at law if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, in addition to any other remedy to which Disclosing Party may be entitled, at law or in equity, Disclosing Party will be entitled to an injunction or injunctions to prevent breaches or threatened breaches of the provisions of this Agreement and to enforce specifically this Agreement and its provisions, without bond or other security being required and without any proof of actual damages. The rights, obligations and remedies created by this Agreement are cumulative and in addition to any other rights, obligations or remedies otherwise available at law or in equity. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by Receiving Party or any of its Representatives, Receiving Party shall reimburse Disclosing Party for any and all costs and expenses including, without limitation, attorneys' fees and expenses incurred in connection with all such litigation. Nothing herein will be considered an election of remedies or a waiver of the right to pursue any other right or remedy to which a Party may be entitled.

(h) Governing Law and Forum Selection. This Agreement will be governed by and interpreted in accordance with the laws of the State of California, without giving effect to any choice of law principles that would result in the application of the laws of any other jurisdiction. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or Representatives) with respect to or arising out of this Agreement shall be brought in the courts of the State of California sitting in the City and County of Los Angeles, California.

(i) Amendment. This Agreement may not be amended or modified except by a writing signed by both of the Parties.

(j) Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof.

(k) Waiver. The waiver, express or implied, by any Party of any of its rights arising under this Agreement shall not constitute or be deemed a waiver of any other right hereunder, whether of a similar or dissimilar nature.

[SIGNATURE PAGE FOLLOWS]

By executing below, the Parties agree and accept this Agreement as of the Effective Date. Each signatory hereby certifies that he or she is duly authorized to execute this Agreement on behalf of his or her Party.

Clean Power Alliance of Southern California [Counterparty Name]

By: _____
Name: Theodore Bardacke
Title: Executive Director
Date: _____, 2022

By: _____
Name:
Title:
Date: _____, 2022