

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue Electric
Integrated Resource Planning and Related
Procurement Processes

R.20-05-003
(Filed May 7, 2020)

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA'S
2023 INTEGRATED RESOURCE PLAN PROCUREMENT DATA UPDATE
[PUBLIC VERSION]**

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February 1, 2023

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OF THE STATE OF CALIFORNIA**

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In compliance with the requirements of California Public Utilities Code Sections 454.51 and 454.52; California Public Utilities Commission (“Commission”) Decisions (“D.”)18-02-018, D.19-11-016, D.20-12-044, and D.21-06-035; and Energy Division’s directions emailed on January 5, 2023, Clean Power Alliance of Southern California (“CPA”) hereby provides its 2023 Integrated Resource Plan (“IRP”) Procurement Data Update to the Commission.

I. INTEGRATED RESOURCE PLAN INCLUDED AS ATTACHMENTS TO THIS FILING

CPA is filing this pleading in this Rulemaking and serving it to all parties identified in this Rulemaking’s service list. The confidential version of CPA’s filing consists of an unredacted RDTv3 template and supporting documentation (“Supporting Documentation”), demonstrating progress of procured incremental capacity resources toward project Milestones, as required by D.20-12-044 (together, “Compliance Filing”). CPA’s confidential version of the Compliance Filing has been provided to the Commission through the Commission’s secure FTP site. Attached to this pleading are CPA’s verification, pursuant to Rule 1.11, and CPA’s redacted, public version of CPA’s RDTv3 template. With the exception of public, non-

confidential documents, CPA's Supporting Documentation has been redacted as appropriate from the public version of CPA's Compliance Filing.

II. CONCLUSION

CPA thanks the Commission for its time and effort in this Rulemaking and for its review of CPA's IRP Procurement Data Update.

Dated: February 1, 2023

Respectfully submitted,

/s/ C.C. Song

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Attachment A: CPA Verification

Verification

Consistent with the direction provided in Energy Division's July 1, 2022 Guidance Email and Rule 1.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Clean Power Alliance of Southern California provides this Verification. I am an officer of the reporting organization herein and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true. I declare under the penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2023, at Los Angeles, California.

Respectfully submitted,

/s/ Matthew Langer

Matthew Langer

Chief Operating Officer

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Attachment B: CPA RDTv3 and Supporting Documents [Public]

| lse_unique_contract_id | resource | alternative_resource_name | contract_status | project_interconnection_position | interconnection_substation | marginal_addition | marginal_addition_to | total_nameplate_capacity | contracted_nameplate_capacity | sep_contracted_mw_nqc | contract_gwh_annual | is_hybrid_paired |
|----------------------------|-----------------------------|----------------------------------|-----------------|----------------------------------|----------------------------|-------------------|----------------------|--------------------------|-------------------------------|-----------------------|---------------------|------------------------------|
| energyCPAS0005 | ARLNTN_2_AR1SR1 | Arlington Solar + Storage | Online | 1196 | Colorado River | 132 | ARLNTN_2_AR1SR1 | 233 | 233 | | 689 | ExistingSolarExistingStorage |
| energyCPAS0003 | RTEDDY_2_SC1SR3 | Golden Fields II | Online | 1212 | Whirlwind | NA | | 40 | 40 | | 116 | NotHybrid |
| energyCPA70002 | WHITEPI_2_MEADORN2 | White Hills Mohave Wind | Online | | | NA | | 300 | 300 | | 830 | NotHybrid |
| energySanborn Storage | SANBRN_2_ESBBT1 | Sanborn Storage | Online | 1424 | Windhub | NA | | 100 | 100 | | 0 | NotHybrid |
| energyCPAS0056 | HIGHDS_2_H5SSR1 | High Desert Solar + Storage | Online | 1414 | Victor | NA | | 100 | 100 | | 294 | ExistingSolarExistingStorage |
| energyCPA70008 | VOYAGR_2_VOYWD4 | Voyager Wind II | Online | | Windhub | NA | | 21 | 21 | | 72 | NotHybrid |
| energyLuna Storage | BIGSKY_2_ASLBT2 | Luna Storage | Online | 1208 | Big Sky | NA | | 100 | 100 | | 0 | NotHybrid |
| energyCPAS0064 | NEW_GENERIC_SOLAR_1AXIS | Estrella Solar + Storage | Development | 1208 | Big Sky North | NA | | 56 | 56 | | 164 | NewSolarNewStorage |
| energyCPAS0065 | _NEW_GENERIC_SOLAR_1AXIS | Daggett 3 Solar + Storage | Development | 1314 | Kramer | NA | | 123 | 123 | | 379 | NewSolarNewStorage |
| energyCPAS0072 | _NEW_GENERIC_SOLAR_1AXIS | Daggett 2 Solar + Storage | Development | 1313 | Kramer | NA | | 65 | 65 | | 200 | NewSolarNewStorage |
| energyCPAS0073 | _NEW_GENERIC_SOLAR_1AXIS | Resurgence Solar + Storage | Development | 1617 | Kramer | NA | | 48 | 48 | | 143 | NewSolarNewStorage |
| energyCPAS0063 | _NEW_GENERIC_SOLAR_1AXIS | Rexford Solar + Storage | Development | 1516 | Vestal | NA | | 300 | 300 | | 848 | NewSolarNewStorage |
| energyCPAS0071 | _NEW_GENERIC_SOLAR_1AXIS | Arica Solar + Storage | Development | 1302 | Red Bluff | NA | | 94 | 94 | | 281 | NewSolarNewStorage |
| energyCPAS0062 | _NEW_GENERIC_SOLAR_1AXIS | Chulan Solar + Storage | Development | 1495 | Arco | NA | | 65 | 65 | | 184 | NewSolarNewStorage |
| Chulan Storage Addition | _NEW_GENERIC_SOLAR_1AXIS | Chulan Storage Addition | Development | 1495 | Arco | NA | | 40 | 40 | | 0 | ExistingSolarNewStorage |
| energyCPAS0080 | NEW_GENERIC_SOLAR_1AXIS | Desert Quartzite Solar + Storage | Development | 1198; 1526 | Colorado River | NA | | 300 | 300 | | 935 | NewSolarNewStorage |
| CPAS0081 | _NEW_GENERIC_SOLAR_1AXIS | RADIANT SOLAR | Development | | Cool Water | NA | | 3 | 3 | | 9 | NotHybrid |
| CPAS0088 | NEW_GENERIC_SOLAR_1AXIS | PROLOGIS EAST DOMINGUEZ SOLAR | Development | | | NA | | 1.0 | 1.0 | | 2.4 | NotHybrid |
| CPAS0089 | NEW_GENERIC_SOLAR_1AXIS | PROLOGIS EL SEGUNDO SOLAR | Development | | | NA | | 0.6 | 0.6 | | 1.4 | NotHybrid |
| CPAS0090 | NEW_GENERIC_SOLAR_1AXIS | PROLOGIS WILMINGTON 1 SOLAR | Development | | | NA | | 1.8 | 1.8 | | 4.0 | NotHybrid |
| CPAS0091 | NEW_GENERIC_SOLAR_1AXIS | PROLOGIS WILMINGTON 2 SOLAR | Development | | | NA | | 0.6 | 0.6 | | 1.5 | NotHybrid |
| CPAS0092 | _NEW_GENERIC_SOLAR_1AXIS | PROLOGIS WORKMAN SOLAR | Development | | | NA | | 1.9 | 1.9 | | 4.7 | NotHybrid |
| CPAS0093 | NEW_GENERIC_SOLAR_1AXIS | Pivot Beverly | Development | | | NA | | 0.4 | 0.4 | | 0.8 | NotHybrid |
| CPAS0094 | _NEW_GENERIC_SOLAR_1AXIS | Pivot San Gabriel | Development | | | NA | | 0.3 | 0.3 | | 0.5 | NotHybrid |
| CPAS0087 | NEW_GENERIC_GEO_THERMAL | Cane Station | Development | | | NA | | 33 | 33 | | 289 | NotHybrid |
| Incremental Planned ZE | _NEW_GENERIC_GEO_THERMAL | | PlannedNew | | | NA | | | | | | NotHybrid |
| Incremental Planned LDES | NEW_GENERIC_BATTERY_STORAGE | | PlannedNew | | | NA | | | | | | NotHybrid |
| Incremental Planned LDES 2 | _NEW_GENERIC_SOLAR_1AXIS | | PlannedNew | | | NA | | | | | | NewSolarNewStorage |
| Incremental Planned ZE 2 | NEW_GENERIC_BIOMASS/WOOD | | PlannedNew | | | NA | | | | | | NotHybrid |

| can_charge_from_grid | total_generator_mw | contracted_generator_mw | total_storage_mwh | contracted_storage_mwh | solar_technology_sub_type | storage_technology_sub_type | total_storage_depth_mwh | contracted_storage_depth_mwh | viability_cod_reasonableness | viability_technical_feasibility | viability_financing_sitecontrol | resource_mix | d1911016_vamo_ghgre |
|----------------------|--------------------|-------------------------|-------------------|------------------------|---------------------------|-----------------------------|-------------------------|------------------------------|------------------------------|---------------------------------|---------------------------------|--|--|
| NO | 233 | | 132 | 132 | 1Axis 1Axis | Li | 528 | 528 | | | | [solar, 140] [battery, 120] [solar, 40] [wind, 300] | 0.19-11-016 |
| NO | 100 | | 50 | 50 | 1Axis | Li Li | 400 200 | 400 200 | | | | [battery, 100] [solar, 100] [battery, 50] [wind, 21.6] [battery, 100] | 0.19-11-016 0.19-11-016 0.19-11-016 0.19-11-016 |
| NO | 56 | | 28 | 28 | 1Axis | Li | 400 | 400 | | | | [solar, 56] [battery, 28] | |
| YES | 123 | | 61.5 | 61.5 | 1Axis | Li | 246 | 246 | | | | [solar, 123] [battery, 61.5] | |
| YES | 65 | | 52 | 52 | 1Axis | Li | 208 | 208 | | | | [solar, 65] [battery, 52] | |
| NO | 48 | | 40 | 40 | 1Axis | Li | 160 | 160 | | | | [solar, 48] [battery, 40] | |
| YES | 300 | | 240 | 240 | 1Axis | Li | 960 | 960 | | | | [solar, 300] [battery, 240] | |
| YES | 93.5 | | 71 | 71 | 1Axis | Li | 284 | 284 | | | | [solar, 93.5] [battery, 71] | |
| YES | 64.9 | | 25 | 25 | 1Axis | Li | 100 | 100 | | | | [solar, 64.9] [battery, 25] | |
| YES | 64.9 | | 65 | 40 | 1Axis | Li | 260 | 160 | | | | [solar, 0] [battery, 40] | |
| YES | 300 | | 150 | 150 | 1Axis | Li | 600 | 600 | | | | [solar, 300] [battery, 150] [solar, 2] [solar, 1.0] [solar, 0.6] [solar, 1.8] [solar, 0.6] [solar, 1.9] [solar, 0.4] [solar, 0.27] [geothermal, 33] | |
| YES | | | | | 1Axis | Li | | | | | | | |

[illegible]

| contract_execution_date_year | contract_execution_date_month | contract_execution_date_day | tx_upgrades | tx_upgrade_date_year | tx_upgrade_date_month | tx_upgrade_date_day | tx_upgrade_description | d1911016_tranche | d2106035_procurement_cat | mtr_tranche1_NQC | mtr_tranche2_NQC | mtr_tranche3_NQC | mtr_tranche4_NQC_LDES | mtr_tranche4_NQC_firm_ZE | mtr_NQC_ZE_gen_paired_dr | previous_COD_year | previous_COD_month |
|------------------------------|-------------------------------|-----------------------------|-------------|----------------------|-----------------------|---------------------|------------------------|------------------|----------------------------|------------------|------------------|------------------|-----------------------|--------------------------|--------------------------|-------------------|--------------------|
| 2019 | 7 | 1 | NA | | | | | 2&3 | general_&_ZE_gen_paired_dr | 118 | | | | | | 2022 | 10 |
| 2019 | 7 | 1 | NA | | | | | 1&2&3 | NA | | | | | | | 2020 | 12 |
| 2019 | 10 | 3 | NA | | | | | 1&2&3 | NA | | | | | | | 2020 | 12 |
| 2020 | 6 | 4 | NA | | | | | 1&2&3 | NA | | | | | | | 2021 | 8 |
| 2020 | 5 | 11 | NA | | | | | 1&2&3 | NA | | | | | | | 2021 | 8 |
| 2018 | 10 | 10 | NA | | | | | 1&2&3 | NA | | | | | | | | |
| 2020 | 4 | 9 | YES | | | | | 2&3 | NA | | | | | | | | |
| 2020 | 11 | 6 | YES | 2021 | 7 | 1 | Upgrades complete | NA | general_&_ZE_gen_paired_dr | | | | | | | 2021 | 8 |
| 2020 | 10 | 2 | YES | 2023 | 4 | 15 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2022 | 12 |
| 2021 | 6 | 5 | YES | 2022 | 12 | 9 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2023 | 3 |
| 2021 | 6 | 5 | NO | | | | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2023 | 3 |
| 2021 | 6 | 5 | YES | 2024 | 12 | 31 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2023 | 10 |
| 2020 | 9 | 4 | YES | 2023 | 6 | 20 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2023 | 12 |
| 2020 | 9 | 4 | YES | 2023 | 12 | 1 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2023 | 12 |
| 2020 | 9 | 4 | YES | 2023 | 12 | 1 | | NA | general_&_ZE_gen_paired_dr | | | | | | | | |
| 2021 | 9 | 3 | YES | 2024 | 7 | 15 | | NA | general_&_ZE_gen_paired_dr | | | | | | | 2024 | 3 |
| 2021 | 9 | 7 | NA | | | | | NA | NA | | | | | | | 2023 | 12 |
| 2022 | 10 | 7 | YES | 2023 | 10 | 1 | | NA | NA | | | | | | | | |
| 2022 | 10 | 7 | YES | 2023 | 10 | 1 | | NA | NA | | | | | | | | |
| 2022 | 10 | 7 | YES | 2023 | 10 | 1 | | NA | NA | | | | | | | | |
| 2022 | 10 | 7 | YES | 2023 | 10 | 1 | | NA | NA | | | | | | | | |
| 2022 | 10 | 7 | YES | 2023 | 10 | 1 | | NA | NA | | | | | | | | |
| 2022 | 12 | 2 | YES | 2023 | 12 | 7 | | NA | NA | | | | | | | | |
| 2022 | 12 | 2 | YES | 2023 | 12 | 7 | | NA | NA | | | | | | | | |
| 2022 | 9 | 1 | YES | 2028 | 6 | 1 | | NA | firm_ZE | | | | | | | | |
| | | | NA | | | | | NA | firm_ZE | | | | | | | | |
| | | | NA | | | | | NA | long_duration_storage | | | | | | | | |
| | | | NA | | | | | NA | long_duration_storage | | | | | | | | |
| | | | NA | | | | | NA | firm_ZE | | | | | | | | |

[illegible]

Long Lead-Time Resource Procurement Obligation Deadline Extension Request for Cape Station

Clean Power Alliance of Southern California (CPA) provides this extension request for the procurement of the D.21-06-035 Tranche 4, Long Lead-Time (LLT) firm, zero-emitting resource Cape Station. Cape Station is a 33 MW expansion phase of a geothermal renewable electricity generating facility known as the Cape Generating Station located in Beaver County, Utah. Cape Station has a Midterm Reliability (MTR) Tranche 4 [REDACTED] which represents [REDACTED] of CPA's 59 MW Firm, zero-emitting generation procurement requirement.

Cape Station bid into CPA's 2021 MTR RFO solicitation with a Commercial Operation Date (COD) of June 1, 2026. CPA shortlisted Cape Station in January 2022 and signed an exclusivity agreement with Cape Station on March 11, 2022, beginning negotiations shortly thereafter. During negotiations, several factors outside of either party's control converged and resulted in both parties agreeing that a COD of June 1, 2028, was necessary to sufficient time to complete the project. Factors causing the delayed COD include:

- Import Allocation Rights (IARs) – CPA consulted the most recent CAISO Advisory Estimates of Future Resource Adequacy Import Capability list to determine future IAR availability. [REDACTED]
[REDACTED]
[REDACTED] CPA determined a 2028 COD would therefore be necessary to ensure Cape Station would be compliant with MTR eligibility requirements.
- Permitting Approvals - The Cape Station project is sited primarily on federal lands managed by the Bureau of Land Management, which will require NEPA Environmental Assessments (EA) to be conducted at different stages of the project. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Other permitting requirements, while not as involved as EAs, had similar issues related to uncertain approval times.
- Interconnection - Interconnection queues continue to be congested and study timelines associated with interconnection applications can vary significantly. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Supply-Chain - Ongoing supply-chain volatility led to longer lead times for key components required to complete the Cape Station project. [REDACTED]
[REDACTED]

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
DECLARATION OF MATTHEW LANGER IN SUPPORT OF EXTENSION TO SUBMIT ITS LONG LEAD-TIME
RESOURCE PROCUREMENT OBLIGATION

I, Matthew Langer, declare as follows:

1. I am Chief Operating Officer at the Clean Power Alliance of Southern California (“CPA”) and 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 submit this declaration in support of CPA’s request for an extension to submit its Long Lead-Time (LLT) Resource Procurement Obligation.
3. CPA is required to procure 59 MW of LLT resources by 2026 through a combination of online or planned long-term contracts. As of the date of this declaration, CPA has procured [REDACTED] MW of its 59 MW of LLT firm, zero-emitting generation requirement through the following contracts:
 - a. CPA executed a Power Purchase Agreement with the Cape Station Project, a 33 MW expansion phase of a geothermal renewable generating facility located in Beaver County, Utah on September 1, 2022. The Cape Station project has an online date of June 1, 2028. [REDACTED]
 - b. A planned PPA with the Geysers incremental project, an 18 MW incremental expansion of the Geysers facility with an online date of June 1, 2026. CPA and Geysers have fully negotiated a power purchase agreement (PPA) for the 18 MW. The PPA is expected to be executed by [REDACTED]
 - c. [REDACTED]
4. To procure the resources identified in paragraph 3, above, CPA held two requests for offers (RFO)s, competitive solicitations, for the purposes of procuring MTR capacity. The 2021 MTR RFO was launched on September 29, 2021, with bids due on November 10, 2021, and the 2022 MTR RFO was launched on August 1, 2022, with bids due on September 9, 2022. [REDACTED]
5. In the 2021 MTR RFO, CPA received [REDACTED] offers that met the MTR’s firm, zero-emitting generation requirements. One of the offers was for the Cape Station project referenced in paragraph 3a, above. [REDACTED]
6. In the 2022 MTR RFO, CPA received [REDACTED] offer that would meet the MTR firm, zero-emitting generation procurement requirements. [REDACTED]

7. Based on CPA's good faith efforts, including multiple RFOs, CPA requests an extension for the procurement of the remaining 1 MW of firm, zero-emitting generation capacity.

Declared under penalty of perjury that the aforesaid is true of my knowledge, information, or belief.

Dated: February 1, 2023

/s/ Matthew Langer

Matthew Langer

Chief Operating Officer

Clean Power Alliance of Southern California

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(213) 713-7012

CONFIDENTIAL

Execution Draft

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Estrella Solar, LLC, a Delaware limited liability company



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

Description of Facility: A 56 MW solar photovoltaic Generating Facility combined with a 112 MWh (28 MW x 4 hours) battery energy Storage Facility, as more fully described herein

Guaranteed Construction Start Date: June 1, 2022











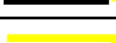
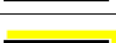
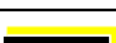
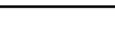
Guaranteed Commercial Operation Date: December 31, 2022

Milestones:

| Milestone | Expected Date for Completion |
|--|---|
| Evidence of Site Control | Complete |
| Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | 10/1/2021 |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreement | Complete |
| Financial Close |  |
| Expected Construction Start Date |  |
| Initial Synchronization | 11/15/2022 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 11/30/2022 |
| Expected Commercial Operation Date | 12/31/2022 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|--|
| 1 | 166,561 |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |
| 6 |  |
| 7 |  |
| 8 |  |
| 9 |  |
| 10 |  |
| 11 |  |
| 12 |  |
| 13 |  |
| 14 |  |
| 15 |  |

Guaranteed Capacity: 84 MW of total Facility capacity

Guaranteed Storage Capacity: 28 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 56 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
|---------------|----------------------------|

| | |
|----|--|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|----------------------|--------------------------------------|
| 1 – 15 | \$ /MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|----------------------|---|
| 1 – 15 | \$ /kW-mo. (flat) with no escalation |

Product

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
 - ☒ Energy Only Status: for the Generating Facility (subject to Section 3.7(d))
 - ☒ Full Capacity Deliverability Status: for the Storage Facility
 - a) RA Guarantee Date: Commercial Operation Date

Scheduling Coordinator: Buyer

Security and Guarantor

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

Performance Security: \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity

Guarantor: N/A as of Effective Date

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2020 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

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

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

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

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services, in each case as defined in the CAISO Tariff

from time to time that the Facility is at the relevant time actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, and the Operating Restrictions set forth in Exhibit Q. For clarity, Ancillary Services as used herein does not include any ancillary services that the Facility is not actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q and the Facility's CAISO Certification.

"Ancillary Services Dispatch" means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

"Annual Forecast" has the meaning set forth in Section 4.3(a).

"Annual Storage Capacity Availability" has the meaning set forth in Exhibit P.

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

"Assignment Agreement" has the meaning set forth in Section 14.5.

"Automated Dispatch System" or **"ADS"** has the meaning set forth in the CAISO Tariff.

"Automated Dispatches" has the meaning set forth in Section 4.5(j).

"Automatic Generation Control" or **"AGC"** has the meaning set forth in the CAISO Tariff.

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

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

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

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

"Buyer" has the meaning set forth on the Cover Sheet.

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

“Buyer Bid Curtailment” means the occurrence of both of the following (a) and (b):

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) either:

(i) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (A) not having submitted a Self-Schedule for the MWhs subject to the reduction or (B) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Economic Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction; or

(ii)

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not delivered 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 PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer breach or default hereunder which directly causes Seller to be unable to deliver PV Energy to the

Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

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

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

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

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

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

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

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

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

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

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

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

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

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility or the Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV 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 or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

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

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

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

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility. The Parties acknowledge that, with reference to Exhibit R, prior to the Grid Charging Effective Date all Charging Energy will originate at, and flow directly from, the Generating Facility (after passing through the Generating Facility Meter) to the Storage Facility and will not cross the Facility’s high voltage transformer or Delivery Point.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, instructing the Storage Facility to charge Charging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided* (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, the MW rate in such “Charging Notice” shall be deemed to be automatically adjusted to the actual power level of the Generating Facility (adjusted for Electrical Losses). Any Buyer Dispatched Test and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“CPM Price” has the meaning set forth in Section 3.8(b).

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

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

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

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, 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;

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a

Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Cycles” means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, instructing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided*: (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy delivered to the Delivery Point would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy delivered to the Delivery Point does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Dispatch Operating Target” has the meaning set forth in the CAISO Tariff.

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

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

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

“Effective Storage Capacity” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission and transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) as applicable, between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

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

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof.

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

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

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

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

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

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

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

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

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

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.

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

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

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

“**Force Majeure Unavailability**” has the meaning set forth in Exhibit C.

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

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

“**Forecasting Penalty**” has the meaning set forth in Section 4.3(f).

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.10(a).

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Storage Facility is eligible for Full Capacity Deliverability Status, which written confirmation may only identify the Storage Facility indirectly as it is part of a larger project using the same CAISO queue position.

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

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

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

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

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

“Generating Facility Testing Condition” has the meaning set forth in Part I.B.4 of Exhibit O.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and CPUC; *provided*, “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 (SO_x), nitrogen oxides (NO_x), 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 PV Energy.

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

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

“Grid Charging Effective Date” has the meaning set forth in Section 3.13.

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

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

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

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

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

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

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

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

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

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

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

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

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

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

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

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

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

"Interconnection Capacity Limit" means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under the Interconnection Agreement, in the amount of 56 MW.

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

"Interest Rate" has the meaning set forth in Section 8.2.

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

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

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

"Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

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

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

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

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

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

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

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

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

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

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

“Make-up Days” has the meaning set forth in Exhibit B.

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

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

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

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

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

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

“**NERC**” means the North American Electric Reliability Corporation.

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

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

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

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

“**Operating Instruction**” has the meaning in the CAISO Tariff.

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

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

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (i) cash, (ii) a Letter of Credit or (iii) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

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

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

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

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

“PMAx” means the applicable CAISO-certified maximum operating level of the Storage Facility.

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

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

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

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

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

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

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

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

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

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

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

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

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

“PV Energy” means all Energy that is delivered from the Generating Facility, as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use (if any).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or

decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

“**SCADA Systems**” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

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

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

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time. The SC may be Buyer if Buyer meets all applicable requirements.

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

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

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

“**Seller Initiated Test**” has the meaning set forth in Section 4.9(c).

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

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

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

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

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

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

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

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

“SOC” or “State of Charge” means (i) the level of charge of the Storage Facility relative to (ii) the Effective Storage Capacity multiplied by four (4) hours, based on the then-current Effective Storage Capacity, expressed as a percentage.

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

“Station Use” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility; *provided*, Station Use does not include Electrical Losses (including transformation losses in the transformer) that exist (a) between the Generating Facility Meter and the Delivery Point, (b) between the Storage Facility Meter and the Delivery Point, and (c) between the Generating Facility Meter and the Storage Facility Meter.

“Storage Capability” has the meaning in Exhibit P.

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

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

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

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

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

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

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

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

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

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

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Part II.H of Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (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 or battery storage facilities.

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

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

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

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

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

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

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

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

“UIE” has the meaning set forth in Section 4.5(k)(i).

“Ultimate Parent” means sPower, LLC, a Delaware limited liability company.

“Unavailability Notice” means any Seller Notice or schedule of Planned Outages with respect to unavailability of the Storage Facility and provided to Buyer pursuant to Sections 4.3(e) and 4.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

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

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

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits (including from the CAISO) for the commencement of operation of the Generating Facility, and of the Storage Facility (for general charging and discharging into the CAISO market [REDACTED]), have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect;

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

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

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

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

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the 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.

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 or other Buyer breach hereunder which directly prevents Seller from achieving such Milestone, 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 shall describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

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

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the

amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

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

3.5 **Future Environmental Attributes.**

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

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

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products of the Generating Facility on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). Following such ninety (90) day period, for a subsequent period of up to an additional ninety (90) days prior to the Commercial Operation Date, Buyer shall schedule Test Energy and any associated Products of the Generating Facility and pay to Seller the lesser of (i) all CAISO payments, credits and revenues

therefrom and (ii) fifty percent (50%) of the Renewable Rate for each MWh of Test Energy delivered to Buyer. The price for any Test Energy delivered to Buyer after such one hundred eighty (180) days shall be zero dollars (\$0) per MWh. The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

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

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

(c) For the duration of the Delivery Term, and subject to Section 3.7(d) and Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the Effective Date, at no cost to Buyer, and thereafter applying for a deliverability allocation from time to time at Buyer's request and Buyer shall reimburse Seller for Seller's costs associated therewith.

3.8 **Resource Adequacy Failure.** Subject to Section 19.12:

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Storage Capacity), minus (ii) the Net Qualifying Capacity of the Storage Facility, multiplied by the price for CPM Capacity (in \$/kW) 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 Storage Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Storage Facility with respect to such month, not to exceed ten percent (10%) 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 written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

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

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility or the Generating Facility (as applicable) 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 (or Generating Facility's, as applicable) 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 (and Buyer's payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

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

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

- (a) Any actions required for Seller to comply with its obligations set forth in

the first paragraph above, the cost of which shall be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**”; *provided*, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date. [REDACTED]

[REDACTED] *provided*, Seller shall obtain Buyer’s written approval prior to taking any Compliance Action which is reasonably likely to cause the Storage Facility to have reduced capacity and/or availability; *provided further*, Buyer shall be deemed to have waived any failure by Seller to comply with the requirements of this Agreement to the extent such failure results from any delay in Seller taking any Compliance Action as directed by Buyer, or due to Buyer’s delay in providing, the approval set forth in the immediately preceding proviso.

(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 shall have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Seller shall provide a second Notice to Buyer, and if Buyer does not respond to such second Notice within five (5) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such costs (as may be revised and updated by Seller at its reasonable discretion after a Buyer rejection of the previously proposed compliance costs); *provided*, if Buyer responds within the required timeframe, Buyer shall have such time as Buyer reasonably requires to direct Seller to take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe, subject to the provisions of Section 3.12(a).

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe (subject to the provisions of Section 3.12(a)), and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy (i.e., energy not produced by the Generating Facility) to provide Charging Energy or conversion from two (2) to one (1) CAISO Resource IDs; *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 in their sole discretion as set forth in a written agreement. The date on which the Parties execute any such agreement to permit the use of grid energy to provide Charging Energy is herein referred to as the “**Grid Charging Effective Date**”.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

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

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

(c) **Energy and Ancillary Services Products**. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including 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 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 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Energy for First Contract Year.** No less than forty-five (45) days before the first day of the first Contract Year of the Delivery Term, and as updated by Seller from time to time thereafter in its discretion or as may be required below, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day hourly expected Energy from the Generating Facility (the "**Forecasted Product**"), by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the "**Annual Forecast**").

(b) **[Reserved]**

(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 (or arrange for an Approved Forecast Vendor to provide Buyer) with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's (or the Approved Forecast Vendor's) best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller (or the Approved Forecast Vendor) fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Annual Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify (or arrange for an Approved Forecast Vendor to notify) Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one

(1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify (or arrange for an Approved Forecast Vendor to notify) Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy (including those provided by an Approved Forecast Vendor) shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided*, Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, with respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify (or arrange for an Approved Forecast Vendor to notify) Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller or the Approved Forecast Vendor shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage.

(f) Forecasting Penalties. If with respect to any given hour Seller has failed to provide the forecast required in Section 4.3(d) and has failed to arrange for an Approved Forecast Vendor to provide such forecast, and due to such failures Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour set forth in the Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV Energy, multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

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

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down or ramping up to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch

Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. Subject to the provisos in Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

4.5 Energy Management.

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

the Charging Energy from the Generating Facility to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer shall have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, the provisions of Section 4.5(a), and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority; *provided*, if Seller receives a Charging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Charging Notice, and Seller shall comply with the Charging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified Charging Notice. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then Section 4.5(k) shall apply and Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; No Unauthorized Discharging. Buyer shall have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, the CAISO Tariff including the Operating Restrictions and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as

automatically updated in accordance with the definition of Discharging Notice). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, in connection with a Buyer Dispatch Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority (it being acknowledged, however, that any unintended or accidental deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not result in a breach of or give rise to Seller liability under this Section 4.5(d)); *provided*, if Seller receives a Discharging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Discharging Notice, and Seller shall comply with the Discharging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, (i) during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and (ii) Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(f) Consequences of Unauthorized Charging and Discharging. If Seller or anyone acting on behalf of Seller charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any unintended or accidental deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not give rise to Seller liability under any other provisions hereof (including Sections 4.5(c), (d), and (f)), it shall be a breach by Seller and Seller shall reimburse Buyer for any costs (including the cost of Energy used for charging the Storage Facility, and any other CAISO costs, charges or penalties) arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be a Seller Event of Default.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall only charge and discharge the Storage Facility in connection with

installation, commissioning and testing of the Storage Facility, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility installation, commissioning and testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("**Alternative Dispatches**").

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation; [REDACTED]

[REDACTED]

(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3, and is

not capable of responding to Automated Dispatches or Alternative Dispatches [REDACTED]

[REDACTED]), such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as set forth in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer's sole remedy arising out of any such incapability of responding to Automated Dispatches or Alternative Dispatches.

(iii) For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility either (A) fails to respond at all to an Ancillary Services Dispatch, or (B) is not certified by the CAISO to provide Ancillary Services, the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer's sole remedy arising out of any such failure to respond at all to an Ancillary Services Dispatch or to be certified by the CAISO to provide Ancillary Services.

(iv) In any case where preceding Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(l) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), and (ii) the supply of such Station Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f).

4.6 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. 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. No Planned Outages shall be scheduled during the period 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. 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. Subject to the restrictions set forth in this Section 4.6(a), Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes; *provided*, Buyer shall cooperate with Seller to make changes to each such schedule, including on less than sixty (60) days advance notice, and shall permit any changes if doing so would not have a material adverse impact on Buyer, provided that (i) such proposed

change is not during the period from each June 1 through October 31 during the Delivery Term unless (x) with respect to maintenance on the Storage Facility, such maintenance is conducted between the hours of 10 p.m. and 6 a.m. and would not cause more than 5 MWs of the Effective Storage Capacity to be unavailable, and (y) with respect to maintenance on the Generating Facility, such maintenance is conducted during the time after sunset and prior to sunrise, and (ii) Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

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

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

(d) Force Majeure Event. 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.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P.

4.7 Guaranteed Energy Production. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV 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) PV 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; *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.8 Storage Facility Availability; Ancillary Services.

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

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller’s payment of liquidated damages made pursuant to Section (f) of Exhibit C.

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

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity; *provided*, Buyer’s exclusive remedies for Seller’s failure to satisfy such obligation are as set forth in Section 4.5(k).

4.9 Storage Facility Testing.

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

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

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

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests

pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification) and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

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

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility shall be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test. For all Seller Initiated Tests, Seller shall reimburse Buyer the amount of Buyer’s payment for the Charging Energy for such Seller Initiated Test, and Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

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

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit, it being

acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (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 PV Energy generated, any fractional MWh amounts (i.e., kWh) shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of an error or omission of Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient

Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement) will be taken prior to the first Energy delivery under this Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of PV Energy that is generating by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

4.11 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

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

5.2 **Cooperation.** Each Party shall use 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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall segregate and separately meter Station Use to the extent reasonably possible for the technology selected by Seller for the Facility in accordance with Prudent Operating Practice and CAISO requirements, and any such meter(s) shall have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes. Upon the reasonable request from time

to time by Buyer, Seller shall provide Buyer a report of the metered quantities of Station Use consumed by the Storage Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, and (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, or if the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement result in charges or penalties (other than UIE) or other adverse consequences to either Party, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.2 Meter Verification. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall make commercially reasonable efforts to cause the meter to be tested. 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 shall 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*, (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

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

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter

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

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

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

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination

Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security or Performance Security for another permitted form.

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: (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; (c) as available, Buyer's annual report, which shall include an overview of customer rate classes and retention rates (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members; (d) committed, unused bank line of credit as of the end of each fiscal quarter; and (e) other financial and operational information for the prior fiscal quarter as may be reasonably requested by Seller's financing parties.

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 or pandemic

(including the COVID-19 pandemic [REDACTED]

[REDACTED]; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; [REDACTED]

civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions 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 or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated

extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event 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 [REDACTED]

[REDACTED], and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

**ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION**

11.1 Events of Default. An "Event of Default" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller (A) to achieve Construction Start on or before the Guaranteed Construction Start Date, or (B) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, in each case (A) and (B) as such dates may be extended in accordance with 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 forecast provided by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the weighted average Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from

Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“**Storage Cure Plan**”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

[REDACTED]

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit or (3) a replacement Guarantor and Guaranty acceptable to Buyer in its sole discretion, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

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

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

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment or (ii) the Termination Payment, as applicable, 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 and Termination Payments. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There shall be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar

or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value 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 on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination

Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated 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 to Buyer on terms and conditions (including price) materially similar to those set forth in this Agreement, 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 reasonably approved by Buyer.

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

11.7 **Rights And Remedies Are Cumulative.** Except as set forth in Section 4.8 and except where liquidated damages or other express remedy or measure of damages are provided herein as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

11.9 **Seller Pre-COD Termination.** At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and

retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 15 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE.

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 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 10.4, 11.2, 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the 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 shall not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall 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 a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions (with such changes as may be reasonably requested by Lenders):

(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 shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender shall 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 shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender shall receive prior written notice of and the right to approve material amendments to this Agreement, which approval shall 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 remaining obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's remaining 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 this Agreement required to be cured in accordance with Section 14.2(f), (i) if 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 its designee must, 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 (if it is not a Permitted Transferee) 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 shall 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.

Except as provided in the preceding sentence, 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 reasonable prior Notice to Seller; *provided*, as conditions to any such assignment: (i) Seller and Buyer (and Seller's financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as Exhibit S ("**Assignment Agreement**"), such agreement not to be unreasonably withheld; (ii) 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; (iii) 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 (iv) 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.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

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

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

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for (i) 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) third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

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

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

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified

Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, 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 shall be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), 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 Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit shall apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

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

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

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

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. 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, then without restricting Buyer's remedies under Article 11, the Law or otherwise, Seller shall (in accordance with the applicable provisions of Section 16.2) indemnify and defend Buyer against all claims and liability for which, and to the same extent that, Buyer would have been covered by Seller's insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

ARTICLE 18

CONFIDENTIAL INFORMATION

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

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

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

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

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

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, 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, after the Effective Date, (i) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, [REDACTED]

[REDACTED], then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered (or, in the case of preceding clause (ii), to maintain Seller's level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ESTRELLA SOLAR, LLC, a Delaware
limited liability company

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Estrella Solar

Site includes all or some of the following APNs: 3262-006-002, 3262-006-003, 3262-001-005, 3262-001-006, 3265-018-001, 3265-018-002, 3265-019-030, 3267-003-025, 3267-003-053, 3267-003-031, 3267-003-061, 3267-003-022, 3267-003-044, 3267-005-005, 3265-022-044, 3265-022-045, 3265-022-010, 3265-022-011, 3265-022-013, 3265-022-015, 3265-022-012, 3265-022-014, 3267-005-021, 3267-005-022, 3219-021-008, 3219-021-009, 3219-021-010, 3219-021-011, 3203-001-036, 3203-001-038, 3203-002-007, 3203-002-008, 3203-002-006, 3203-002-005, 3267-005-902, 3219-024-100, 3219-023-007, 3219-023-008, 3219-023-016, 3219-023-018, 3219-023-019, 3203-001-041, 3203-001-009, 3203-002-010, 3203-002-009, 3203-001-031

City: North Antelope Valley

County: Los Angeles County

Zip Code: 93536

Latitude and Longitude: -118.3133, 34.8509

Delivery Point: Pnode for the Generating Facility

Generating Facility Metering Point: See Metering Diagram in Exhibit R

Storage Facility Metering Point: See Metering Diagram in Exhibit R

P-node applicable to Facility's CAISO IDs: As established by CAISO for POI at SCE Antelope Substation 220 kV Bus.

Transmission Provider: Southern California Edison

Additional Information: N/A

Facility Description: Estrella Solar is a 56 MW AC photovoltaic solar project which includes a 28MW / 112MWh AC-connected battery energy storage facility located in Los Angeles County, California. The Facility will be located within a portion of the green area set forth in the **Site**

Diagram, below.

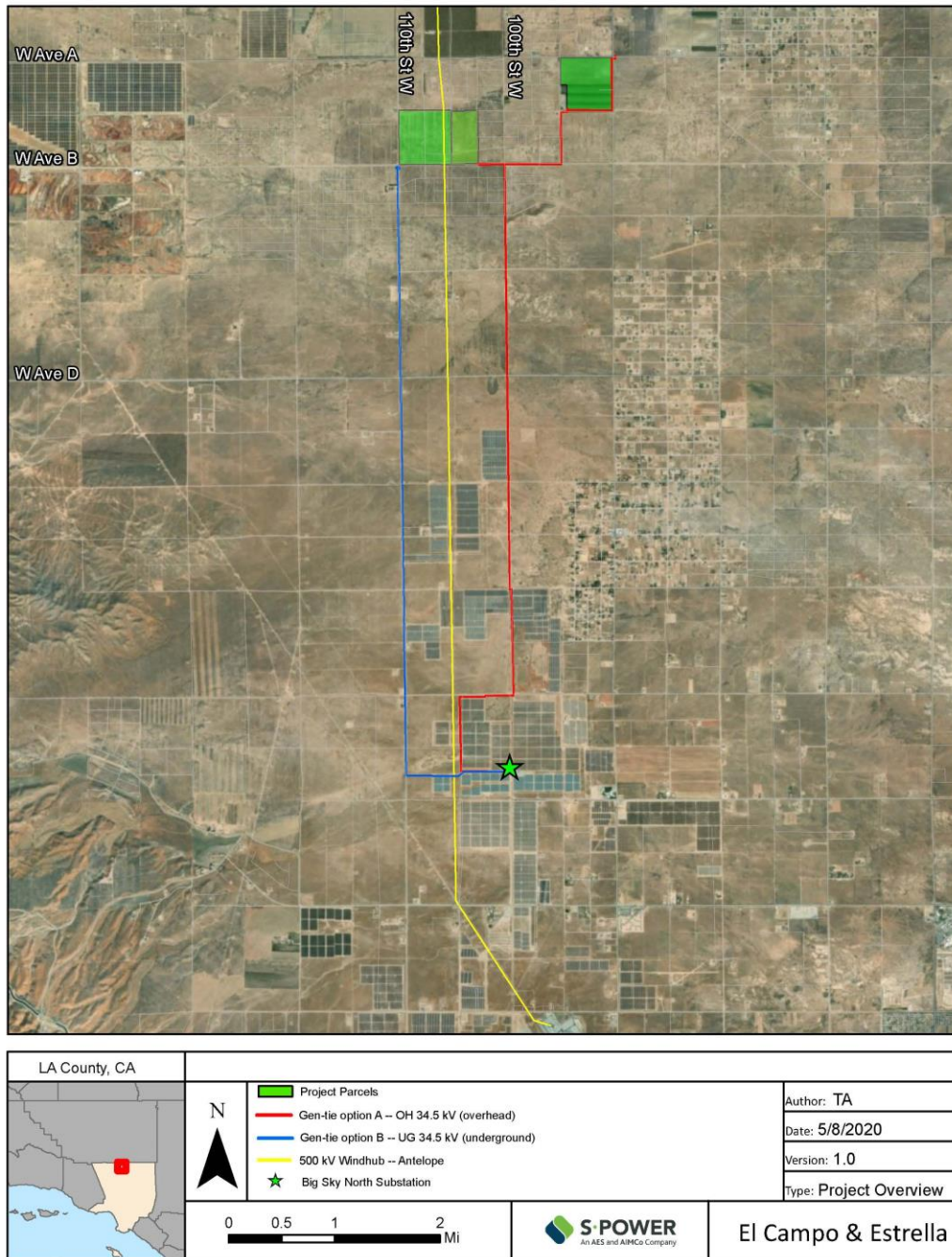


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of an engineering, procurement, and construction contract (or similar contract) and issuance of a full notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; *provided*, in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Each day for which Seller pays Daily Delay Damages shall automatically extend the Guaranteed Commercial Operation Date, and if Seller achieves the Commercial Operation Date by one or more days prior to the extended Guaranteed Commercial Operation Date, with such number of days by which the Commercial Operation Date precedes the Guaranteed Commercial Operation Date as extended by the payment of Daily Delay Damages (but not by a Development Cure Period) being referred to as the **“Make-up Days”**, then Buyer shall refund to Seller an amount equal to the number of Make-up Days multiplied by the Daily Delay Damages amount, up to but not in excess of the aggregate amount of Daily Delay Damages previously paid. If requested by Seller, the Parties

shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”); and the “**Commercial Operation Date**” means the date set forth in such Notice of the occurrence of the fulfillment of such conditions precedent.
 - a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] [REDACTED] days of cumulative extensions by payment of Daily Delay Damages and/or Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Daily Delay Damages and/or Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to [REDACTED] [REDACTED] days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date

(as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** Independent of Seller's extension rights under Sections 1 and 2 of this **Exhibit B** above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
- a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs, [REDACTED]
[REDACTED]
[REDACTED] or
 - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

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

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date (i.e., ninety (90) days after the Commercial Operation Date), Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

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

(d) Monthly Capacity Payment.

(i) Each calendar month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%) of the Guaranteed Storage Availability, or (B) the final Annual Storage Capacity Availability for a given Contract Year is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “Storage Capacity Availability Payment True-Up”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability

Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments for a given Contract Year

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $((\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 1.5) - (\text{Force Majeure Unavailability} * 0.5)$

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

- (e) **Test Energy**. Test Energy is compensated in accordance with Section 3.6.

- (f) **Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate**. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall

be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

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

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

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

(b) Notices. Buyer's SC (which may be Buyer) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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) telephone or electronic mail to the personnel designated to receive such information. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. Subject

to Section 4.5(k) of the Agreement, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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 shall take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

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

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance, with any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession, or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility

or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 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:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the SP15 Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

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

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

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

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, 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.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____[DATE]_____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.
7. Seller has segregated and separately metered Station Use to the extent reasonably possible for the technology selected by Seller for the Facility 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-1

FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;
and

(d) The Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of __%, (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

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

(such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]
APPLICANT: [TO BE ADVISED (SHOULD BE A SINGLE ENTITY)]
AMOUNT: [TO BE ADVISED]
EXPIRY: 1 YEAR FROM ISSUANCE

Beneficiary:

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

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., New York time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [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.

Drawing(s) under this Letter of Credit may be presented to us by facsimile transmission to facsimile number [XXX] (if presented by fax it must be followed up by a phone call to Issuer at [XXX] to confirm receipt. In the event of a presentation via facsimile transmission, no mail

confirmation is necessary and the facsimile transmission shall constitute the operative drawing documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit shall 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 Exhibit A.

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 shall expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date shall be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of [XXXXXX], 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]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), *provided*, Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty

and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO SHALL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|---|--|
| ESTRELLA SOLAR, LLC, a Delaware limited liability company (“Seller”) | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”) |
| All Notices: Street: 2180 South 1300 East, Suite 600 City: Salt Lake City, Utah 84106 Attn: General Counsel Phone: (801) 679-3506 Email: notices@spower.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: Federal Tax ID Number: | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: Accounts Payable Phone: (801) 679-3512 E-mail: accountspayable@spower.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: Control Room Phone: (855) 679-3553 Email: ControlRoom@spower.com | Scheduling: TBD Attn: Phone: Email: |
| Confirmations: Attn: Director, Utility Power Marketing Phone: (415) 692-7572 Email: tkalbag@spower.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org |
| Payments: Attn: Accounts Payable Phone: (801) 679-3512 E-mail: accountspayable@spower.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: ABA: ACCT: | Wire Transfer: BNK: River City Bank ABA: XXXXXXXXXX ACCT: XXXXXXXXXX |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “**CT**”. Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3, or equivalent, data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy may be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period (the "**Generating Facility Testing Condition**"); *provided*, Seller may waive such Generating Facility Testing Condition at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the Generating Facility Testing Condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom (including pursuant to Part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT shall still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4).
 - (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
 - (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.
- B. Parameters. During each CT, the following parameters shall be measured and recorded

simultaneously for the Storage Facility, at two (2) second intervals:

- (1) Time;
- (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
- (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
- (4) SOC (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

- (1) That the CT successfully started;
- (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above, including, if applicable, as adjusted pursuant to Part I.B(4) above;
- (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B(4) above;
- (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
- (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy and Energy In, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy and Energy Out, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
 - (2) Abnormal Conditions. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40° Celsius or below 0° Celsius), Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
 - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Part II.I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event, or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
 - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
 - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects on a reasonable basis the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for the Storage Facility (“Supplementary Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended modifications and updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Energy Out (as reported under Part II.D(7) above) divided by the total amount of Energy In (as reported under Part II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Section (f) of Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility shall be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.

- (4) Record and log the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and log the total AC energy (in MWh) charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("**Energy In**").
- (6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A(6)(a), the SOC will be deemed 0% for purposes of calculating the Battery Discharging Factor.
- (8) Record the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Part III.A(6), continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity and/or Efficiency Rate. "**Energy Out**" means the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the commencement of discharging pursuant to Part III.A(6) until the Storage Facility has reached a 0% SOC pursuant to either Part III.A(6) or Part III.A(9), as applicable.

- Test Results

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter (without adjusting for Electrical Losses).

- (2) The resulting Effective Storage Capacity measurement is calculated as the total Energy discharged pursuant to Part III.A(8) at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility shall be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS shall be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility shall be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test (only applicable after the Grid Charging Effective Date)

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility shall be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system shall be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility shall be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**Unavailable Calculation Intervals**” means the sum of year-to-date Unavailable Calculation Intervals (as defined in the above formula) for the applicable Contract Year, where for each Calculation Interval:

“**A**” is the “available Effective Storage Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC (measured at the Storage Facility Meter), expected from all available system inverters in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the then Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual operating conditions).

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, or (ii)(A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by four (4) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) Seller shall design the Storage Facility so that the final stamped design drawings used for construction of the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 28 MW charging and 28 MW discharging at [REDACTED] degrees Celsius ([REDACTED]° C). If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example a derate table for temperatures that exceed [REDACTED] degrees Celsius ([REDACTED]° C).

(d) After [REDACTED] Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties shall develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller's commencement of Facility construction); *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) shall, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) shall include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

STORAGE FACILITY OPERATING RESTRICTIONS

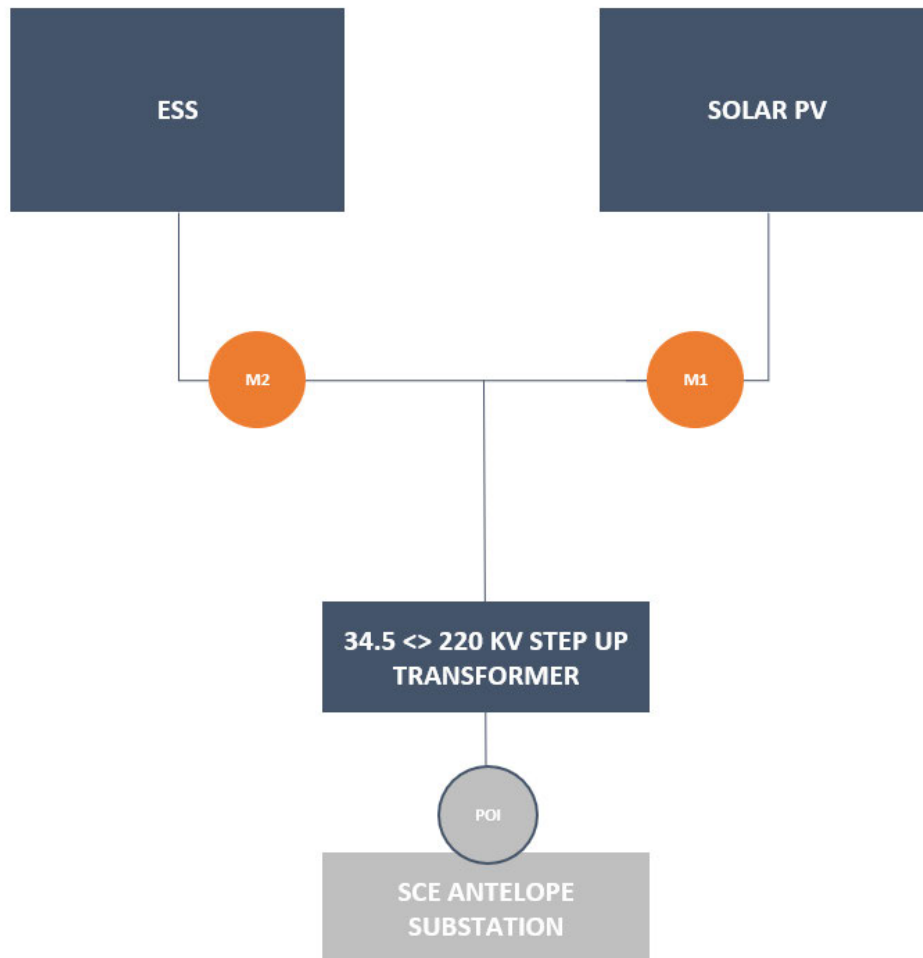
| | | |
|--|------------------------------------|---|
| File Update Date: | [XX/XX/20XX] | |
| Technology: | Lithium Ion Battery Energy Storage | |
| Storage Unit Name: | [Unit Name and Number] | |
| A. Contract Capacity | | |
| Guaranteed Storage Capacity (MW): | 28 | |
| Effective Storage Capacity (MW): | 28 | |
| B. Total Unit Dispatchable Range Information | | |
| Interconnect Voltage (kV) | 220 | |
| Maximum Storage Level (MWh): | 112 | |
| Minimum Storage Level (MWh): | 0 | |
| Stored energy capability (MWh): | 112 | |
| Maximum Discharge (MW): | 28 | |
| Maximum Charge (MW): | 28 | |
| Guaranteed Efficiency Rate: | See Cover Sheet | |
| Maximum energy throughput (BET) (MWh/year): | | |
| C. Charge and Discharge Rates | | |
| Mode | Maximum (MW) | Ramp Rate (MW/m) Description ¹ |
| Energy (Charge) | 28 | |
| Energy (Discharge) | 28 | |
| D. Ancillary Services | | |
| Frequency regulation is included: | Yes | |
| Spin is included: | Yes | |
| E. Additional Restrictions | | |
| 1. The Storage Facility shall be charged exclusively with PV Energy before the Grid Charging | | |

¹ Stated Ramp Rate assumes ramp from 0 MW to full power. The Parties acknowledge that the Ramp Rate as stated (in MW/min, with the minutes measured as the time between when the signal is received to when the energy is recorded at the Storage Facility Meter) is provided only for the ramping of the system at Maximum Charge or Maximum Discharge. Ramping to a lower output than the Maximum Charge or Maximum Discharge (in absolute value) will require an identical amount of time, and therefore the Ramp Rate as expressed in MW/min will be lower.

| |
|--|
| Effective Date. |
| 2. [REDACTED] Cycles per Contract Year maximum. Two (2) Cycles per day maximum. |
| 3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit. |
| 4. Average resting SOC of the Storage Facility in each Contract Year must be less than [REDACTED] %. |
| 5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] |
| 6. Minimum ambient operating temperature without de-rate: -20 Degrees C. Below – 20 C, the Facility may shut down in Seller’s discretion; <i>provided</i> , any such derate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under <u>Exhibit P</u> . |

EXHIBIT R
METERING DIAGRAM

[Preliminary]



M1 = Generating Facility Meter

M2 = Storage Facility Meter

POI = Delivery Point

EXHIBIT S

FORM OF ASSIGNMENT AGREEMENT

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

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

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: Appendix 1 to provide for transfer of RECs.]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it shall 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 shall 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 shall 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 shall end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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

Financing Party

Email: _____

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

5. Governing Law, Jurisdiction, Waiver of Jury Trial

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

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

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

[Remainder of Page Intentionally Blank]

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

PPA SELLER

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By:

Name:

Title:

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

[ISSUER]

By:

Name:

Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Power Purchase Agreement dated [_____] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [_____] and extending until [_____] *provided*, in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the PPA²

Assigned Product: [Describe and define]

Further Information: [Include, if any]³

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

² 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.

³ To include transfer and settlement mechanics for RECs, as applicable.

AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of July 8, 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Estrella Solar, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

RECITALS

- A. The Parties entered into that certain Renewable Power Purchase and Sale Agreement, dated as of November 6, 2020 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. **Amendments to the Agreement.**
 - (a) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “June 1, 2022” is deleted and replaced with “June 1, 2023”.
 - (b) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “December 31, 2022” is deleted and replaced with “December 31, 2023”.
 - (c) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Financial Close | ████████ |
| Expected Construction Start Date | ████████ |
| Initial Synchronization | 11/15/2023 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 11/30/2023 |
| Expected Commercial Operation Date | 12/31/2023 |

- (d) The number of Contract Years specified for the Delivery Term on the Cover Sheet shall be changed from “Fifteen (15)” to “Sixteen (16)”.
- (e) In the Delivery Term Expected Energy table on the Cover Sheet, an additional row shall be added as follows:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 16 | ████████ |

- (f) In the Guaranteed Efficiency Rate table on the Cover Sheet, an additional row shall be added as follows:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 16 | ████████ |

- (g) In the Contract Price section of the Cover Sheet, each reference to “1 – 15” for the applicable Contract Years in the two tables shall be changed to “1 – 16”.
- (h) Section 1.1 is amended to add a new defined term as follows:

“**Amendment No. 1**” means that certain Amendment No. 1 to Power Purchase Agreement executed between the Parties effective as of July 8, 2022 amending this Agreement.

- (i) A new Section 3.8(c) is added as follows:

(c) Initial Replacement RA. Notwithstanding any other provisions of this Agreement to the contrary, Seller shall provide to Buyer twenty-eight (28) MW of Replacement RA for each month of July, August and September of 2023 in accordance with the procedures set forth in the proviso in the last four lines of Section 3.8(b), provided that such Replacement RA may at Seller's election consist of System RA, Local RA and/or Flexible RA.

(j) Section 3.10 is replaced in its entirety with the following:

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

(k) Section 4.10(g) is replaced in its entirety with the following:

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

(l) New Sections 4.10(i) and (j) are added as follows:

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

(j) Seller's obligations under Sections 3.10 and 4.10(i) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(i) means efforts consistent with and subject to Section 3.12.

(m) In Section 10.4(a), the phrase "one hundred eighty (180)" is replaced by the phrase "sixty (60)".

(n) A new Section 13.5 is added as follows:

13.5 Seller's Consideration for Amendment. In consideration for Buyer agreeing to Amendment No. 1, Seller shall, on or before October 6, 2022, pay to Buyer five hundred thousand dollars (\$500,000).

- (o) In the final paragraph of Section 4 of Exhibit B, the phrase "one hundred eighty (180)" is replaced by the phrase "sixty (60)" and the phrase "two hundred seventy (270)" is replaced by the phrase "one hundred fifty (150)".

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims are resolved by this Amendment and Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment. Notwithstanding the foregoing, the Parties acknowledge and agrees that: (a) the foregoing and the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the terms of the Agreement due to events, facts or circumstances arising after the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment. Seller represents and warrants as of the Effective Date of this Amendment that neither it, nor any of its Affiliates, are currently aware of any existing facts or circumstances specifically involving the Facility or its procurement that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD (it being understood that circumstances related to COVID-19, supply chain and related matters could change unexpectedly). Notwithstanding the foregoing, in no event shall any further delays or other adverse developments with respect to the approval or execution of a Franchise Agreement with Los Angeles County, or the issuance thereof, constitute a basis for a claim of Force Majeure or additional Development Cure Period day-for-day extensions of the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein" or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.

- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

“SELLER:”

Estrella Solar, LLC

By: _____

Printed Name:

Title:

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____

Printed Name:

Title:

ATTACHMENT 1

Development Cure Period Claims

1. Matters set forth in that certain letter, dated December 29, 2021, from Seller (executed by Sean McBride) to Buyer entitled “Re: Force Majeure Notice Under [Agreement]”.
2. Matters set forth that certain letter, dated June 8, 2022, from Seller (executed by Trupti Kalbag) to Buyer entitled “Re: Estrella Solar Project Delays”.

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: 20SD 8me LLC, a Delaware limited liability company

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

Description of Facility: A 300 MW solar photovoltaic Generating Facility combined with a 540 MWh (180MW x 3 hours) battery energy Storage Facility, as more fully described herein

Guaranteed Construction Start Date: January 15, 2023

Guaranteed Commercial Operation Date: October 1, 2023

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Evidence of Site Control | Complete. |
| Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | September 1, 2022 |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete. |
| Executed Interconnection Agreement | Complete. |
| Financial Close | ██████████ |
| Expected Construction Start Date | ██████████ |
| Initial Synchronization | June 1, 2023 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | October 1, 2023 |
| Expected Commercial Operation Date | October 1, 2023 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 853,044 |
| 2 | ████████ |
| 3 | ████████ |
| 4 | ████████ |
| 5 | ████████ |
| 6 | ████████ |
| 7 | ████████ |
| 8 | ████████ |
| 9 | ████████ |
| 10 | ████████ |
| 11 | ████████ |
| 12 | ████████ |
| 13 | ████████ |
| 14 | ████████ |
| 15 | ████████ |

Guaranteed Capacity: 480 MW of total Facility capacity

Guaranteed Storage Capacity: 180 MW of Installed Storage Capacity at three (3) hours of continuous discharge

Guaranteed PV Capacity: 300 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
|---------------|----------------------------|

| | |
|----|------|
| 1 | ████ |
| 2 | ████ |
| 3 | ████ |
| 4 | ████ |
| 5 | ████ |
| 6 | ████ |
| 7 | ████ |
| 8 | ████ |
| 9 | ████ |
| 10 | ████ |
| 11 | ████ |
| 12 | ████ |
| 13 | ████ |
| 14 | ████ |
| 15 | ████ |

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|----------------------|---|
| 1 – 15 | \$████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|----------------------|--|
| 1 – 15 | ████/kW-mo. (flat) with no escalation |

Product

- ☒ PV Energy
 - ☒ Discharging Energy
 - ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
 - ☒ Installed Storage Capacity and Effective Storage Capacity
 - ☒ Ancillary Services
 - ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status
- a) RA Guarantee Date: Commercial Operation Date

Scheduling Coordinator: To be designated by Buyer

Security and Guarantor

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

Performance Security: \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity

Guarantor: Not applicable on Effective Date

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2020 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

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

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

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

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, and the Operating Restrictions set forth in Exhibit Q. For clarity, “Ancillary Services” as used herein does not include any ancillary services that the Facility is not actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, the Operating Restrictions set forth in Exhibit Q, and the Facility’s CAISO Certification.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Approved Forecast Vendor” means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, or DNV GL or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“ASHRAE 2% Average High Temperature” means the location specific temperature rating for the Site that is based on historical climate data and represents the high temperature rating for which the actual temperature at the Site is only expected to exceed such rating for an anticipated fourteen (14) hours in a given year, as published by the professional organization, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

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

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

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

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

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

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

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first three and three-quarter (3.75) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first three (3) hours of the discharging phase of the applicable Storage Capacity Test.

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

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

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

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

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such

instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility, and/or Curtailment Order.

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

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

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

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

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

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

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

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

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public

Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

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

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

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

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

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

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

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

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

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted

by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility. For the avoidance of doubt, prior to the Grid Charging Effective Date, the Parties acknowledge that with reference to Exhibit R, all Charging Energy will originate at, and flow directly from, the Generating Facility to the Storage Facility and will not cross the HV Transformer or Delivery Point.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, instructing the Storage Facility to charge Charging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided* (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility (as adjusted to reflect Electrical Losses). For the avoidance of doubt, any Buyer Dispatched Test and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“CPM Price” has the meaning set forth in Section 3.8(b).

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

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

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

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

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

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

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

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

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) three (3) times the weighted average Effective Storage Capacity for such Contract Year to date.

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

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

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

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

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

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

during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

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

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

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

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

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

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

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

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, instructing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh, *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

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

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

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for three (3) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Energy In into Energy Out, as calculated by dividing Energy Out in the applicable month of the Delivery Term by Energy In in the same month of the Delivery Term, expressed as a percentage, and if the SOC at the beginning of the applicable month is not equal to the SOC at the end of the applicable month, the Parties shall mutually agree on a reasonable adjustment to such calculation.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

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

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“Energy In” means all Energy delivered into the Storage Facility (not including “idle losses” -- i.e., energy metered into the Storage Facility when not charging or discharging) measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

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

“Energy Out” means all Energy output from the Storage Facility as measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

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

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

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

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

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

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

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Storage Facility Meter and/or Generating Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

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

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

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

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

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

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

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

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

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

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

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

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; *provided*, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

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

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other

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

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

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

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

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

“Grid Charging Effective Date” has the meaning set forth in Section 3.13.

“Guaranteed Capacity” means the sum of (a) the Guaranteed PV Capacity and (b) the Guaranteed Storage Capacity.

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

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

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

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

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

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

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for three (3) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the applicable amount of Scheduled Energy.

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

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

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

“Installed Capacity” means the sum of (a) the Installed PV Capacity and (b) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for three (3) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times three (3) hours.

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

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

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 300 MW.

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

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

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

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

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

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

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

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

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

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

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

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

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

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

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

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

“Make-up Days” has the meaning set forth in Exhibit B.

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

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

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

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

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

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

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

“NERC” means the North American Electric Reliability Corporation.

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

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

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

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

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

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

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided, however*, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (a) cash, (b) a Letter of Credit or (c) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

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

(i) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff. **“Scheduled”** and **“Scheduling”** have corollary meanings.

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

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time. The SC may be Buyer if Buyer meets all applicable requirements.

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

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

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

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

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

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

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

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

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

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

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

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

“SOC” or **“State of Charge”** means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by three (3) hours, expressed as a percentage.

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

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

“Storage Capability” has the meaning in Exhibit P.

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

C.

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

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

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

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

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

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

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

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

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

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time shall be greater than the Stored Energy Level as defined in the preceding sentence, and the Facility’s energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Section II.H of Exhibit O.

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

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

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

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

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

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

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

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

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

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

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

“Ultimate Parent” means 8minutenergy US Solar, LLC, a Delaware limited liability company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

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

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed

PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

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

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

(d) All applicable regulatory authorizations, approvals and permits (including from the CAISO) for the commencement of operation of the Generating Facility and Storage Facility have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect, including any CAISO Certification necessary for the Storage Facility to commence (i) general charging and discharging in the CAISO market and (ii) the provision the Ancillary Services in the CAISO market; [REDACTED]

[REDACTED];

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

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

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

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

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of

Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

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

ARTICLE 3 PURCHASE AND SALE

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

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer, except as set forth in Section 4.5(k).

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

3.5 **Future Environmental Attributes.**

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

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

3.6 **Test Energy.** No less than ninety (90) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability and expected duration of the Test Energy. Buyer shall have the right, but not the obligation, to purchase from Seller all Test Energy and associated Green Attributes from the Generating Facility (but not Storage Product) on an as-available basis for an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). Buyer shall notify Seller within thirty (30) days after receipt of Seller's notice whether Buyer elects to purchase the Test Energy. For the avoidance

of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6. If Buyer elects not to purchase the Test Energy, Seller may sell the Test Energy into the CAISO until the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, in such case Seller shall be entitled to all CAISO and other revenues arising from such Test Energy.

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

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

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

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

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (1) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (2) the Net Qualifying Capacity of the Facility, multiplied by (ii) the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, not to exceed ten percent (10%) of the Qualifying Capacity amount in any such RA Shortfall Month, and *provided, further*, that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product

information in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

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

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (a) the Facility or the Generating Facility (as applicable) 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 (b) the Facility's (or Generating Facility's, as applicable) 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 (and Buyer's payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

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

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

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided* that Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material

manner as a result of any change in Law occurring after the Effective Date; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Seller shall provide a second Notice to Buyer, and if Buyer does not respond to such second Notice within five (5) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions for the remainder of the Delivery Term; *provided, however*, that if Buyer responds within the required timeframe, Buyer shall have such time as Buyer reasonably requires to direct Seller to take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe.

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

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

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

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

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

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss.**

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

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

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

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

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

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

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

fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

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

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

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

4.4 Dispatch Down/Curtailment.

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

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided* that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

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

Curtailment or Curtailment Order (for the avoidance of doubt, without double counting any penalties for which Seller is liable under Section 4.5(k)(i)).

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

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice

is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then Section 4.5(k) shall apply, and Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. During any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; No Unauthorized Discharging. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as automatically updated in accordance with the definition of Discharging Notice). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, (i) during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and (ii) Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(f) Consequences of Unauthorized Charging and Discharging. If Seller or anyone under Seller's control charges or discharges the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any failures to comply with charging or discharging dispatches for which there is an express remedy for such failure in Section 4.5(c) or

(k) shall not give rise to a Seller breach or Seller liability under this Section 4.5(f)), it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all third party claims for actual costs or losses associated therewith, and be responsible to Buyer for any third party claimed damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("**Alternative Dispatches**").

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that (for the avoidance of doubt) otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be

responsible to reimburse Buyer for all CAISO charges and penalties payable by Buyer to CAISO and resulting from such deviation. [REDACTED]

(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3 or Exhibit P, and is not capable of responding to Automated Dispatches or Alternative Dispatches [REDACTED]

[REDACTED], such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as provided in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer's sole remedy arising out of any such incapability of responding to Automated Dispatches or Alternative Dispatches.

(iii) [REDACTED]

[REDACTED] For each Calculation Interval during the Delivery Term after which the Storage Facility has obtained initial CAISO Certification for the provision of Ancillary Services and is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer's sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch.

(iv) For clarity, in any case where preceding Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(l) Station Use. For the avoidance of doubt and notwithstanding anything to the contrary in this Section 4.5 or this Agreement, the Parties acknowledge that Seller is responsible for providing all Energy to serve Station Use of the Facility, that Station Use associated with the Facility may be supplied from the grid, and that the supply of such Station Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f); *provided* that Seller shall be responsible for the cost of any Energy supplied from the grid to serve such Station Use.

4.6 **Reduction in Energy Delivery Obligation.** For the avoidance of doubt, and in no way limiting Sections 3.1, 3.8 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) **Facility Maintenance.** Seller will provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. No Planned Outages shall be scheduled during the hours of 6 a.m. to 10 p.m. during the period from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion; *provided* that following the Grid Charging Effective Date, no outages shall be scheduled or planned for the Storage Facility during any hours during the period from each June 1 through October 31, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes, *provided* that Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

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

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

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

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

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including

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

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

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

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller’s payment of liquidated damages pursuant to Section (f) of Exhibit C.

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

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity, *provided* that Buyer’s exclusive remedies for Seller’s failure to satisfy such obligation are as set forth in Section 4.5(k).

4.9 **Storage Facility Testing**

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

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

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

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

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and for the avoidance of doubt, Buyer shall pay all Charging Energy costs and pay Seller the Renewable Rate for all PV Energy used as Charging Energy. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment of the Renewable Rate to Seller for all PV Energy used as Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

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

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), *provided* that Seller fulfills its obligations under Sections 4.10(a) through (f) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy, any fractional

MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in the normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of an error or omission of Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of PV Energy that is generating by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

4.11 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

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

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on

Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

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

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Upon the reasonable request from time to time by Buyer, Seller shall provide Buyer with good faith estimates (based on Prudent Operating Practice) as to the quantities of Station Use consumed by the Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) The foregoing Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If

any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Energy Out and Energy In as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real

time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

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

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the

Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

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

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security or Performance Security for another permitted form (i.e., cash, Letter of Credit or Guaranty, as applicable); *provided, however*, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer's acceptance of a Guaranty shall be subject, in Buyer's sole discretion, to Guarantor meeting Buyer's credit requirements.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance

Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

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

ARTICLE 9 NOTICES

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

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

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

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

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

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions (including resulting from changes in Law) that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the

inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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

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

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

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

Agreement.

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

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails

to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

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

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

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

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the weighted average Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

[REDACTED]

[REDACTED]

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

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

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

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

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

an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

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

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

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

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party

other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

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

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

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

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

11.9 **Seller Pre-COD Termination.** At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date, *provided* that in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 15 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR

NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 4.10(e) 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE

BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) The Facility is located in the State of California.

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

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

positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; *provided* that such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement capable of cure in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, *provided* that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

(i) In connection with any financing or refinancing of the Facility by Seller, or as may be required by Buyer to effectuate a Buyer Financing Assignment pursuant to Section 14.5, the Parties agree to provide customary estoppel certificates, including as to the following: (i) the organization, existence and good standing of Buyer or Seller, as applicable, under applicable laws, (ii) Buyer's or Seller's, as applicable, power and authority to execute, deliver and perform the estoppel certificate and this Agreement, (iii) the enforceability of the estoppel certificate and this Agreement, (iv) the occurrence or existence of any default, Event of Default, or Force Majeure under this Agreement, (v) any amendment, modification, supplementation, or assignment of this Agreement, (vi) any pending or threatened action or proceeding against Buyer or Seller, as applicable, that could reasonably be expected to affect Buyer's or Seller's, as applicable, ability to perform this Agreement or affect the enforceability of this Agreement, and (vii) other similar customary matters reasonably requested by an equity provider or tax equity provider, as applicable.

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

(i) the assignee is a Permitted Transferee;

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

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

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

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

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

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

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

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

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

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

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

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

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified

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

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including contractual liability products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Twenty Million Dollars (\$20,000,000). The coverage required under this Section 17.1(a) may be provided through a combination of general liability, umbrella liability and/or excess liability policies. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain employers' liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

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

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment has arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

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

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement (except as noted above in 17.1(e) with respect to the Construction All-Risk, which will not be procured until the start of construction) and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage except ten (10) days prior notice for cancellation for nonpayment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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

ARTICLE 18

CONFIDENTIAL INFORMATION

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

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

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

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

attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

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

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

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

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

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

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

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

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

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California

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

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

19.12 **Change in Electric Market Design.** If, after the Effective Date, (a) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered (or, in the case of preceding clause (b), to maintain Seller's level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

20SD 8ME LLC, a Delaware limited liability
company

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Rexford Solar Farm

Site includes all or some of the following APNs: 339-110-001, 339-050-006, 339-050-007, 339-050-008, 339-050-013, 339-050-004, 321-140-007, 321-140-008, 321-140-014, 321-140-010, 321-140-012, 321-140-013, 321-140-015, 321-120-002, 321-120-004, 321-130-005, 321-040-011, 321-040-025, 321-040-008, 321-040-007, 321-110-016, 339-110-008, 339-110-009, 339-080-016, 339-080-005, 339-080-013, 339-080-015, 339-070-014, 339-070-015, 339-070-016, 321-200-006, 321-190-001, 321-190-002, 321-210-004, 339-070 026, 321-070-014, 321-070-026, 323-040-006, 323-040-008, 323-040-007.

County: Tulare

Zip Code: 93215

Latitude and Longitude: 35.840599, -119.082345

Facility Description: 300 MW(AC) PV + 540 MWh (180 MW(AC) x 3 hours) storage

Delivery Point: SCE Vestal Substation

Storage Facility Meter Point: See Metering Diagram in Exhibit R

Generating Facility Metering Point: See Metering Diagram in Exhibit R

P-node applicable to Facility's CAISO ID: VESTAL_2_B1

Transmission Provider: Southern California Edison Company

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of an engineering, procurement, and construction contract (or similar contract) and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; *provided*, in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Each day for which Seller pays Daily Delay Damages shall automatically extend the Guaranteed Commercial Operation Date, and if Seller achieves the Commercial Operation Date by one or more days prior to the extended Guaranteed Commercial Operation Date, with such number of days by which the Commercial Operation Date precedes the Guaranteed Commercial Operation Date as extended by the payment of Daily Delay Damages (but not by a Development Cure Period) being referred to as the **“Make-up Days”**, then Buyer shall refund to Seller an amount equal to the number of Make-up Days multiplied by the Daily Delay Damages amount, up to but not in excess of the aggregate amount of Daily Delay Damages previously paid. If requested by Seller, the Parties

shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

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

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

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

4. **Extension of the Guaranteed Dates.** Independent of Seller's extension rights under Section 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
- a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; 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 date that is thirty (30) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

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

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity

is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at three (3) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

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

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%) of the Guaranteed Storage Availability, or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number,

Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\left(\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}} \right) \times 1.5$

[REDACTED]

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

- (f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month by (ii) the percentage

amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

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

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

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

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

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

Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. Subject to Section 4.5(k) of the Agreement, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

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

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance, with any applicable NERC reliability standards. This cooperation shall include the

provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F-1

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 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

FORM OF MONTHLY EXPECTED PV ENERGY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-3

FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT

[MW Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-4

FORM OF MONTHLY AVAILABLE STORAGE CAPABILITY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the SP15 Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

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

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

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

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period,

provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____[DATE]_____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge Energy of __ MW AC to the Delivery Point at three (3) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;

and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge Energy of ___ MW AC to the Delivery Point at three (3) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

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

(such description shall amend the description of the Site in Exhibit A).

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

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized 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 GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

- 1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.
- 2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty

and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|--|--|
| 20SD 8ME LLC, a Delaware limited liability company ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| All Notices: Street: 4370 Town Center Blvd., Suite 110 City: El Dorado Hills, CA 95762 Attn: Transactions c/o 8minute Solar Energy LLC Phone: (916) 608-9060 Facsimile: (916) 608-9861 Email: transactions@8minute.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: Federal Tax ID Number: [REDACTED] | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: Accounts Payable c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 E-mail: invoice@8minute.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: Transactions c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 Email: transactions@8minute.com | Scheduling: TBD Attn: Phone: Email: |
| Confirmations: Attn: Transactions c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 Email: transactions@8minute.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org |
| Payments: Attn: Account Receivable c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 E-mail: transactions@8minute.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED] | Wire Transfer: BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED] |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. The CT procedures, as described within this Exhibit O, shall be applicable until the Grid Charging Effective Date. Prior to the Grid Charging Effective Date, all

Charging Energy used to charge the Storage Facility during any CT shall exclusively be PV Energy from the solar Generating Facility. This Exhibit O shall be modified prior to the Grid Charging Effective Date, as mutually agreed upon by Buyer and Seller pursuant to Section 3.13 of this Agreement.

C. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device using a Remote Terminal Unit (RTU), and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

- D. Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Guaranteed Storage Capacity continuously for a three and three-quarter (3.75)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for three (3) continuous hours; and
 - (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed three and three-quarter (3.75) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net Energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
 - (4) Stored Energy Level (MWh) and SOC (%).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging real power level for three (3) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging real power level for three (3) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging real power level registered during the CT (for purposes of calculating the ramp rate);

- (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging real power level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least 80% of one (1) Cycle in the 24-hour period prior to the beginning of the CT.
- (2) Abnormal Conditions. If abnormal operating or grid conditions that prevent the prescribed testing or recordation of any required parameter (including low irradiance) occur prior to or during a CT that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. Except as provided in Part I(D), if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity shall be updated as follows:
 - (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first three (3) hours of discharge (up to, but not in excess of, the product of (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by three (3) hours) shall be divided by three (3) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.

- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) three and three-quarter (3.75) hours have elapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) three and three-quarter (3.75) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC Energy charged to the Storage Facility as measured at the Storage Facility Meter.
- (6) Following an agreed-upon rest period after sunset, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for three (3) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after three (3) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by three (3) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).

- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test (only applicable after the Grid Charging Effective Date)

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding, all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date Unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{\text{A}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 3 \text{ hrs}} \right)$$

“**A**” is the “available Effective Storage Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the then-current Effective Storage Capacity.

“**Storage Capability**” means the sum the following (taking into account the SOC at the time of calculation): of (i) the Energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the Energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual operating conditions).

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, or (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) Seller shall design the Storage Facility so that the final stamped design drawings used for construction of the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 180 MW charging and 180 MW discharging at [REDACTED] (degrees C). If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example a derate table for temperatures that exceed the [REDACTED] (degrees C).

(d) After [REDACTED] Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller's commencement of Facility construction); *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

a. STORAGE FACILITY OPERATING RESTRICTIONS

| | | |
|--|---|-----------------------|
| File Update Date: | 8/26/2020 | |
| Technology: | Lithium Ion Battery Energy Storage | |
| Storage Unit Name: | Rexford | |
| A. Contract Capacity | | |
| Guaranteed Storage Capacity (MW): | 180 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| Effective Storage Capacity (MW): | 180 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| B. Total Unit Dispatchable Range Information | | |
| Interconnect Voltage (kV) | 230 kV | |
| Maximum Storage Level (MWh): | 540 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| Minimum Storage Level (MWh): | 0 at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| Stored energy capability (MWh): | 540 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| Maximum Discharge (MW): | 180 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | |
| Maximum Charge (MW): | 180 MW at the Storage Facility Meter | |
| Annual Average SOC: | <div><div></div><div></div><div></div><div></div></div> | |
| Guaranteed Efficiency Rate: | See Cover Sheet | |
| Maximum Cycles / Contract Year: | <div></div> Cycles | |
| C. Charge and Discharge Rates | | |
| Mode | Maximum (MW) | Ramp Rate Description |
| Energy (Charge) | 180 | <div></div> |
| Energy (Discharge) | 180 | <div></div> |
| D. Ancillary Services | | |
| Frequency regulation is included: | Yes | |

| | |
|---|-----|
| Spin is included: | Yes |
| E. Additional Restrictions | |
| 1. The Storage Facility shall be charged exclusively with PV Energy unless the Parties mutually agree otherwise pursuant to Section 3.13. | |

b. GENERATING FACILITY OPERATING RESTRICTIONS

1. The sum of PV Energy plus Discharging Energy shall not exceed the Interconnection Capacity Limit.

EXHIBIT R
METERING DIAGRAM

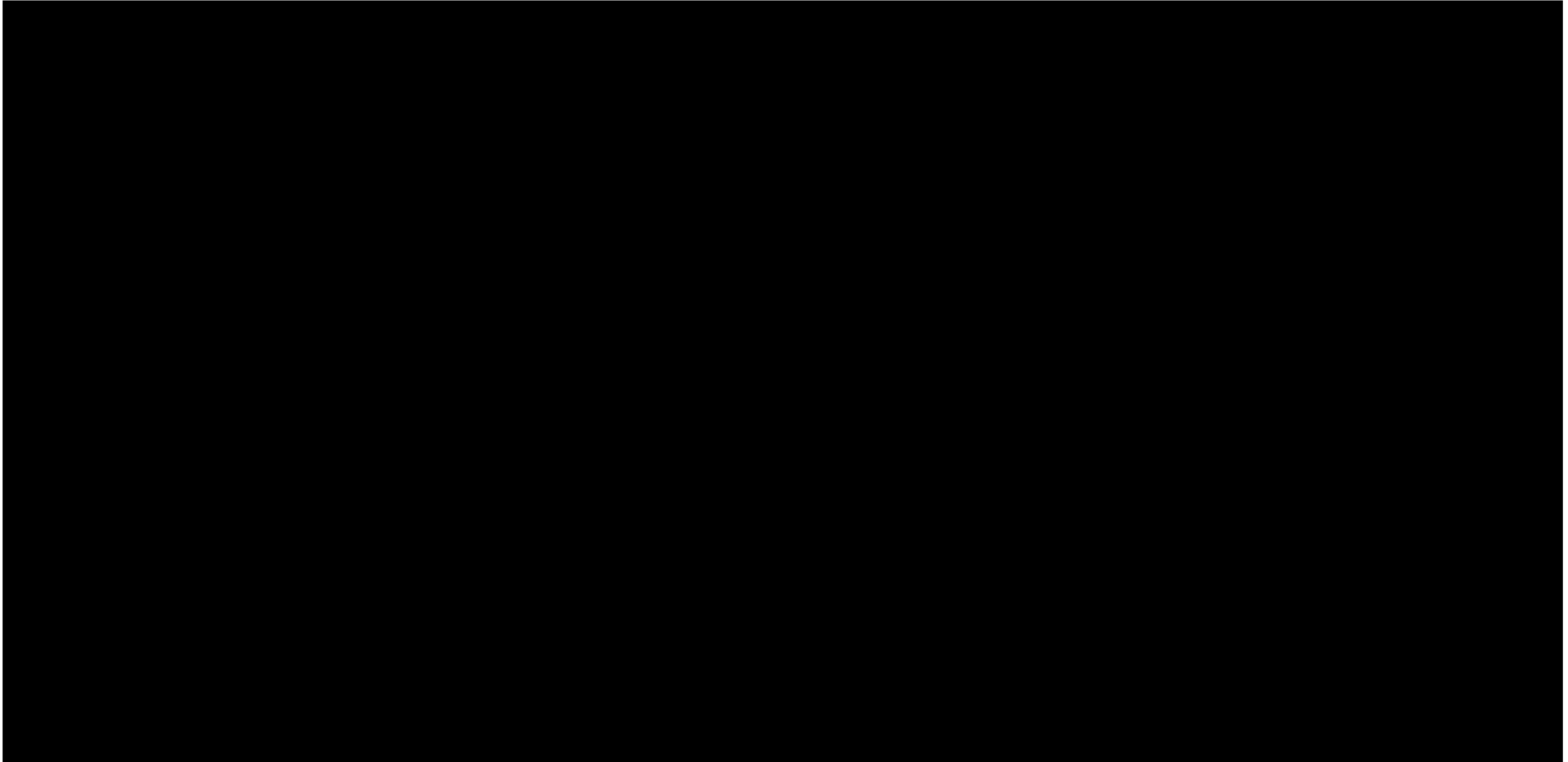


EXHIBIT S

FORM OF ASSIGNMENT AGREEMENT

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

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

1. Limited Assignment and Delegation.

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

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

2. Assignment Early Termination.

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

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

Financing Party

Email: _____

4. Miscellaneous. Sections [] [Severability], [] [Counterparts], [] [Amendments] and [] [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference

into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

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

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

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

[Remainder of Page Intentionally Blank]

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

PPA SELLER

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By:

Name:

Title:

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

[ISSUER]

By:

Name:

Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Power Purchase Agreement dated [_____] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [_____] and extending until [_____] , provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the PPA¹

Assigned Product: [Describe and define]

Further Information: [Include, if any]²

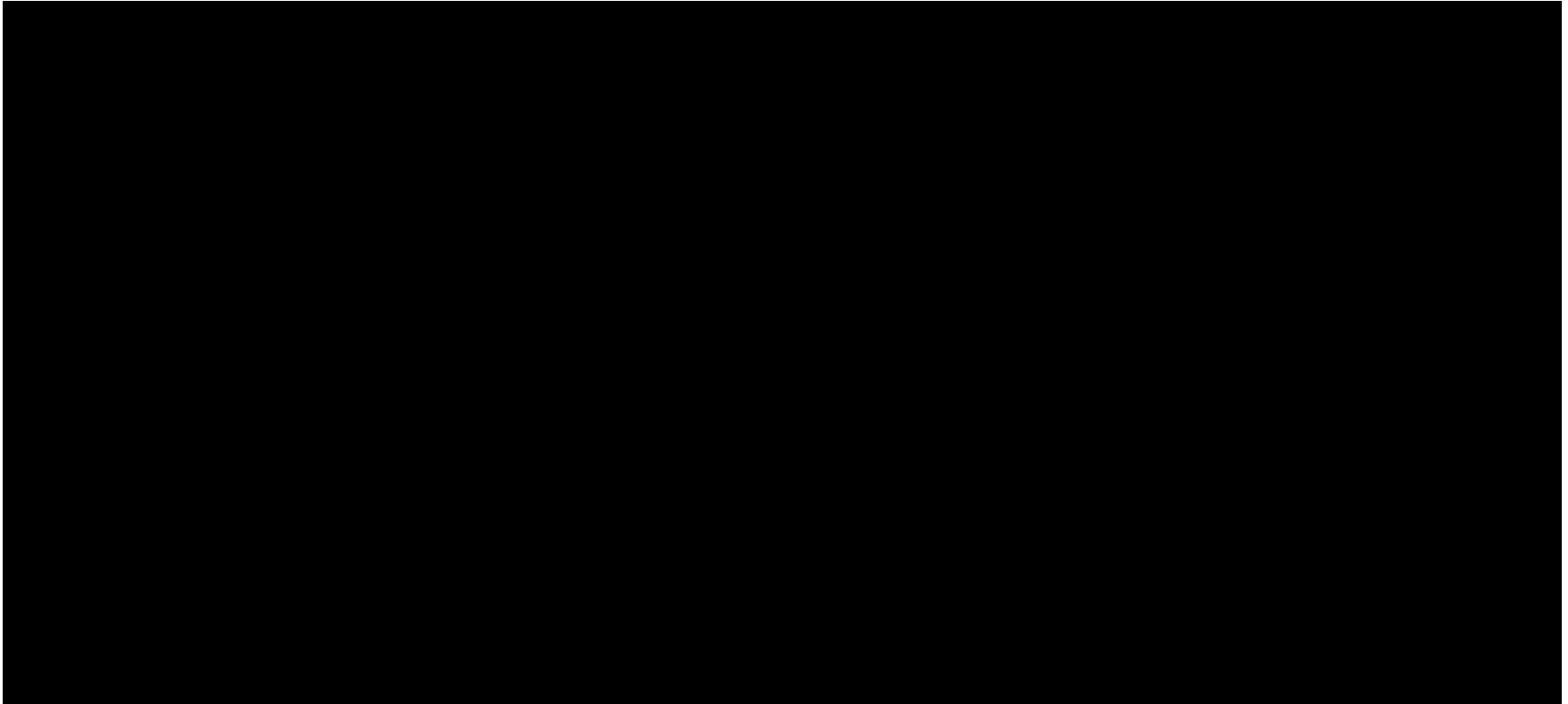
Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

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 T

EXAMPLE CALCULATIONS APPLYING PROVISIONS OF SECTION 4.5(K)(I)



AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: 20SD 8me LLC, a Delaware limited liability company

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

Description of Facility: A 300 MW solar photovoltaic Generating Facility combined with a 960 MWh (240MW x 4 hours) battery energy Storage Facility, as more fully described herein

Guaranteed Construction Start Date: June 30, 2024

Guaranteed Commercial Operation Date: December 31, 2024

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Evidence of Site Control | Complete. |
| Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, []Neg Dec, []Mitigated Neg Dec, [x]EIR | Complete. |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete. |
| Executed Interconnection Agreement | Complete. |
| Financial Close | |
| Expected Construction Start Date | |
| Initial Synchronization | September 1, 2024 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | December 31, 2024 |
| Expected Commercial Operation Date | December 31, 2024 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 853,044 |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Guaranteed Capacity: 540 MW of total Facility capacity

Guaranteed Storage Capacity: 240 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 300 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
|---------------|----------------------------|

| | |
|----|------|
| 1 | ████ |
| 2 | ████ |
| 3 | ████ |
| 4 | ████ |
| 5 | ████ |
| 6 | ████ |
| 7 | ████ |
| 8 | ████ |
| 9 | ████ |
| 10 | ████ |
| 11 | ████ |
| 12 | ████ |
| 13 | ████ |
| 14 | ████ |
| 15 | ████ |

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|----------------------|--------------------------------------|
| 1 – 15 | \$████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|----------------------|---|
| 1 – 15 | \$████/kW-mo. (flat) with no escalation |

Assumed Tax Credit Rates: As of the Amendment Effective Date, the Parties have assumed for purposes of this Agreement that Seller would qualify for and utilize: (i) an ITC at thirty percent (30%) for the Storage Facility; and (ii) a PTC at \$0.027/kWh for the Generating Facility for the calendar year in which the Generating Facility is “placed in service” for federal income tax purposes (together, the “**Assumed Tax Credit Rates**”).

Product

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status
 - a) RA Guarantee Date: Commercial Operation Date

Scheduling Coordinator: To be designated by Buyer

Security and Guarantor

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

Performance Security: \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity

Guarantor: Not applicable on Effective Date

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AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of October ____, 2022 (the “**Amendment Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Renewable Power Purchase Agreement, dated as of September 4, 2020 (the “**Effective Date**”);

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of such Renewable Power Purchase Agreement as provided herein;

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

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

“**Adjustment Date**” means, with respect to the Generating Facility, either (a) if Seller elects to use ITC for the Generating Facility, the date on which the Generating Facility is “placed in service” for federal income tax purposes, or (b) if Seller elects to use PTC for the Generating Facility, the later of (i) the date on which the Generating Facility is “placed in service” for “federal income tax purposes” and (ii) 90 days prior to GCOD.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with

respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

“Alternative Dispatches” has the meaning set forth in Section 4.5(j).

“Amendment Effective Date” has the meaning set forth in the Preamble.

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, and the Operating Restrictions set forth in Exhibit Q. For clarity, “Ancillary Services” as used herein does not include any ancillary services that the Facility is not actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, the Operating Restrictions set forth in Exhibit Q, and the Facility’s CAISO Certification.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Approved Forecast Vendor” means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, or DNV GL or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“ASHRAE 2% Average High Temperature” means the location specific temperature rating for the Site that is based on historical climate data and represents the high temperature rating for which the actual temperature at the Site is only expected to exceed such rating for an anticipated fourteen (14) hours in a given year, as published by the professional organization, American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE).

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

“Assumed Tax Credit Rates” has the meaning set forth on the Cover Sheet.

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

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

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

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Storage Facility) within the Storage Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the operation of the Storage Facility.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

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

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five and a half (5.5) hours of the charging phase of the applicable Storage Capacity Test.

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

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

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

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

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

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply

Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

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

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

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

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

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

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

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility or the Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy or PV Energy (as applicable) delivered to the Delivery Point or Generating Facility Meter (as applicable) qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than

fifty percent (50%) of the outstanding equity interests in Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly either owns more than fifty percent (50%) of the outstanding equity interests in each, or controls each, such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"Charging Energy" means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility (including, for the avoidance of doubt, Auxiliary Uses during such charging).

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. A Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"COD Certificate" has the meaning set forth in Exhibit B.

"Collateral Assignment Agreement" has the meaning set forth in Section 14.2.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" has the meaning set forth in Exhibit B.

"Commercial Operation Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

"Commercial Operation Storage Capacity Test" means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

"Communications Protocols" means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

"Compliance Actions" has the meaning set forth in Section 3.12(a).

"Compliance Expenditure Cap" has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an

Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility,

or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"Deemed Delivered Energy Rate" has the meaning set forth in Section 4.4(b).

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.10(e).

"Delay Damages" means Daily Delay Damages and Commercial Operation Delay Damages.

"Delivery Point" has the meaning set forth in Exhibit A.

"Delivery Term" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Development Cure Period" has the meaning set forth in Exhibit B.

"Development Security" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"Discharging Energy" means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, instructing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh, *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"Disclosing Party" has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the recitals.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Energy In into Energy Out, as calculated by dividing Energy Out in the applicable month of the Delivery Term by Energy In in the same month of the Delivery Term, expressed as a percentage, and if the SOC at the beginning of the applicable month is not equal to the SOC at the end of the applicable month, the Parties shall mutually agree on a reasonable adjustment to such calculation.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“Energy In” means all Energy delivered into the Storage Facility (not including any Idle Auxiliary Use or other “idle losses” -- i.e., energy metered into the Storage Facility when not charging or discharging) measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses and after subtracting any Idle Auxiliary Use.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” means all Energy output from the Storage Facility as measured at the Storage Facility Metering Point by the Storage Facility Meter, without taking into account or applying any CAISO or other meter adjustments for Electrical Losses.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

[REDACTED]

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Storage Facility Meter and/or Generating Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Financial Close” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

“Force Majeure Event” has the meaning set forth in Section 10.1.

[REDACTED]

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating PV Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy originating from such solar photovoltaic generating facility to the Storage Facility; *provided*, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown on Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or

parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and CPUC; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) 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 (c) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (a) the Guaranteed PV Capacity and (b) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Idle Period Auxiliary Use” means Auxiliary Use consumed by the Storage Facility during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the applicable amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Energy from the Facility to the Delivery Point.

“Installed Capacity” means the sum of (a) the Installed PV Capacity and (b) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 300 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back-leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement

prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives. In circumstances where Seller is a Non-Defaulting Party, the value of lost PTCs (if any) shall be included as “Losses” and such value shall be considered direct compensable damages, and not indirect or consequential damages.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Make-up Days**” has the meaning set forth in Exhibit B.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**Monthly Forecast**” has the meaning set forth in Section 4.3(b).

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth on Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided, however*, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (a) cash, (b) a Letter of Credit or (c) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(i) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(ii) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, or (failing such operations experience) has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Property Tax Exclusion” means the “new construction” exclusion from California real property taxation under California Revenue and Taxation Code Section 73 or a similar Law.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**PV Energy**” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“**RA Guarantee Date**” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“**Real-Time Forecast**” has the meaning set forth in Section 4.3(d).

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

“**Real-Time Price**” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“**Receiving Party**” has the meaning set forth in Section 18.2.

“**Reliability Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Remedial Action Plan**” has the meaning set forth in Section 2.4.

“**Renewable Energy Credit**” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“**Renewable Energy Incentives**” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form

of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet; provided, if the last officer’s certificate provided by Seller pursuant to Section 2.2(i) states that:

(a) Seller will utilize the PTC for the Generating Facility and that the PTC rate stated in such officer’s certificate is higher than Seller’s Assumed Tax Credit Rate for the PTC, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above the Assumed Tax Credit Rate for the PTC (prorated as appropriate); or

(b) Seller will utilize the ITC for the Generating Facility instead of the PTC, then (i) the Renewable Rate shall be increased to \$ [REDACTED] per MWh and (ii) if the ITC rate stated in such officer’s certificate is higher than thirty percent (30%), such Renewable Rate (i.e., \$ [REDACTED] per MWh) shall be reduced by \$ [REDACTED] /MWh for each one (1) percentage point by which such stated ITC rate is above thirty percent (30%), prorated as appropriate for partial percentage points.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems

to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer's SC.

"Schedule" has the meaning set forth in the CAISO Tariff. **"Scheduled"** and **"Scheduling"** have corollary meanings.

"Scheduled Energy" means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"Scheduling Coordinator" or **"SC"** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time. The SC may be Buyer if Buyer meets all applicable requirements.

"Security Interest" has the meaning set forth in Section 8.9.

"Self-Schedule" has the meaning set forth in the CAISO Tariff.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller Initiated Test" has the meaning set forth in Section 4.9(c).

"Seller's WREGIS Account" has the meaning set forth in Section 4.10(a).

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"Settlement Period" has the meaning set forth in the CAISO Tariff.

"Shared Facilities" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"Showing Month" shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource

Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SOC**” or “**State of Charge**” means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, AC temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility, and includes all Auxiliary Use.

“**Storage Capability**” has the meaning in Exhibit P.

“**Storage Capacity Availability Payment True-Up**” has the meaning set forth in Exhibit C.

“**Storage Capacity Availability Payment True-Up Amount**” has the meaning set forth in Exhibit C.

“**Storage Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity and/or Effective Storage Capacity, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage Cure Plan**” has the meaning set forth in Section 11.1(b)(iv).

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved, bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet; *provided*,

(a) if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that the ITC rate for the Storage Facility is higher than Seller’s Assumed Tax Credit Rate for ITC, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the new ITC rate is above the Assumed Tax Credit Rate for ITC, prorated as appropriate for partial percentage points; and

(b) if at any time during the Delivery Term, Energy from the CAISO Grid is used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that the use of such Charging Energy (except to the extent such use is caused by Seller) results in Seller losing twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by the applicable amount per kW-month set forth in the table below for all periods during which such loss is applicable, it being acknowledged that such increase may be applied retroactively (and even after the Agreement may have been terminated), taking into account that the loss of a Property Tax Exclusion may be applied retroactively, so that this provision shall survive the termination of the Agreement but in no event, shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion, and the Parties shall cooperate in good faith to implement the foregoing:

| Contract Year in which increase first becomes applicable | Storage Rate Increase (in \$ per kW-month) |
|--|--|
| 1 -2 | [REDACTED] |

| | |
|---------|------|
| 3 - 5 | ████ |
| 6 - 10 | ████ |
| 11 - 12 | ████ |
| 13 - 14 | ████ |
| 15 | ████ |

and

(c) if at any time during the Delivery Term, Energy from the CAISO Grid is used as Charging Energy, and Seller demonstrates to Buyer's reasonable satisfaction that the use of such Charging Energy (except to the extent such use is caused by Seller) results in Seller losing more than twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by the amount necessary to make Seller whole (on an after tax basis) for the resulting increased property tax expense to Seller for the remaining useful life of the Storage Facility, it being acknowledged and agreed that (1) any such Storage Rate increase may be applied retroactively (and even after the Agreement may have been terminated), taking into account that the loss of a Property Tax Exclusion may be applied retroactively, so that this provision shall survive the termination of the Agreement, (2) if there has been a Storage Rate increase pursuant to the provisions of above paragraph (b) or this paragraph (c), and thereafter the use of energy from the CAISO Grid for Charging Energy is increased (except to the extent such increase is caused by Seller) that results in Seller losing additional Property Tax Exclusion, then the Storage Rate shall be increased further in accordance with the foregoing, and (3) the Parties shall cooperate in good faith to implement the foregoing; provided that (A) the cumulative increases to the Storage Rate pursuant to paragraph (b) and this paragraph (c) shall not result in the cumulative Storage Rate increases exceeding the amount set forth in the table below and (B) Seller shall not request an increase to the Storage Rate under this paragraph due to use of CAISO Grid Energy for Charging Energy during any period following the expiration of the applicable statute of limitations date after which relevant taxing Governmental Authorities may no longer claim any reduction in the Property Tax Exclusion arising out of such use of CAISO Grid Energy during such period and in no event shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion.

| Contract Year in which increase first becomes applicable | Storage Rate Increase Cap (in \$ per kW-month) |
|--|---|
| 1 - 2 | ████ |
| 3 - 5 | ████ |

| | |
|---------|---|
| 6 - 10 | ■ |
| 11 - 12 | ■ |
| 13 - 14 | ■ |
| 15 | ■ |

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time shall be greater than the Stored Energy Level as defined in the preceding sentence, and the Facility’s energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Section II.H of Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means 8minutenergy US Solar, LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term, unless the context otherwise requires;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided, however*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

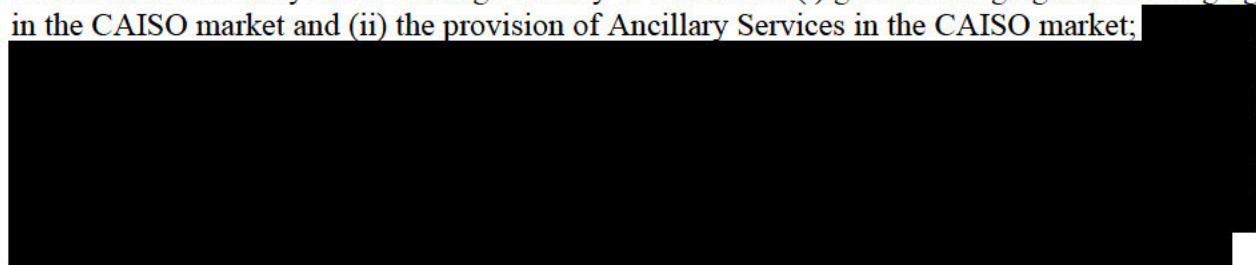
2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits (including from the CAISO) for the commencement of operation of the Generating Facility and Storage Facility have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect, including any CAISO Certification necessary for the Storage Facility to commence (i) general charging and discharging in the CAISO market and (ii) the provision of Ancillary Services in the CAISO market;



(e) Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable), and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable) in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

(i) Seller has delivered to Buyer an officer's certificate stating:

(a) whether Seller will utilize PTC or ITC for the Generating Facility, and the applicable PTC or ITC rate that would apply to the Generating Facility as of the date of such officer's certificate if the Generating Facility were "placed in service" for federal income tax purposes on the Adjustment Date; provided, if Seller's prior officer's certificate indicated it will utilize PTC for the Generating Facility, and the United States Internal Revenue Service provides any update to such PTC rate (i.e., to the rate for the calendar year in which the Adjustment Date occurs) after the date of such officer's certificate, Seller shall provide another officer's certificate informing Buyer of such updated PTC rate; provided further, that Seller may elect to use ITC (rather than PTC) for the Generating Facility only if either:

(1) the Renewable Rate would (after application of clause (b) of the definition of "Renewable Rate") not exceed \$38.57/MWh; or

(2)(A) Seller in good faith determines, based on input from nationally recognized tax counsel, either that the Generating Facility is ineligible for PTC, or that there is material risk to Seller in qualifying for PTC for the Generating Facility at the same time as qualifying for the ITC for the Storage Facility and (B) Seller has sent written notice to Buyer prior to the Commercial Operation Date reasonably explaining the details of such Seller determination and within thirty (30) days following the date of such notice Buyer has not sent written notice back to Seller electing to terminate this Agreement, which termination right Buyer shall have upon any such ITC election (it being agreed that any such termination shall be no-fault and Buyer shall return to Seller all Development Security); and

(b) the ITC rate Seller will utilize for the Storage Facility.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably

requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to the terms and conditions of this Agreement, Buyer has no obligation to pay Seller the Renewable Rate for any Product from the Generating Facility for which the associated PV Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the

Generating Facility and received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer, except as set forth in Section 4.5(k).

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than ninety (90) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability and expected duration of the Test Energy. Buyer shall have the right, but not the obligation, to purchase from Seller all Test Energy and associated Green Attributes from the Generating Facility (but not Storage Product) on an as-available basis for an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). Buyer shall notify Seller within thirty (30) days after receipt of Seller's notice whether Buyer elects to purchase the Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6. If Buyer elects not to purchase the Test Energy, Seller may sell the Test Energy

into the CAISO until the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, in such case Seller shall be entitled to all CAISO and other revenues arising from such Test Energy.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (1) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (2) the Net Qualifying Capacity of the Facility, multiplied by (ii) the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, not to exceed ten percent (10%) of the Qualifying Capacity amount in any such RA Shortfall Month, and *provided, further*, that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification**. Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.11 **California Renewables Portfolio Standard**. Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap**. If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided* that Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date; and *provided, further*,

[REDACTED]

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Seller shall provide a second Notice to Buyer, and if Buyer does not respond to such second Notice within five (5) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions for the remainder of the Delivery Term; *provided, however*, that if Buyer responds within the required timeframe, Buyer shall have such time as Buyer reasonably requires to direct Seller to take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement. Additionally, within sixty (60) days following the Amendment Effective Date, the Parties agree in good faith to attempt to negotiate a second amendment to the Agreement that would reduce the Renewable Rate by [REDACTED] ([REDACTED]) per MWh in return for allowing Seller to increase the size of the Generating Facility and require Buyer to cause “clipped energy” from the Generating Facility to be charged into the Storage Facility, *provided*, neither Party shall be obligated to agree to any such second amendment, or to incur any expense in connection with such amendment, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and including without limitation any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Buyer's designated Scheduling Coordinator in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss.**

(a) Energy. Title to all PV Energy shall pass and transfer from Seller to Buyer at the Generating Facility Metering Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-2, F-3, and F-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer

fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders. If Seller elects to utilize the PTC for the Generating Facility, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount (such amount, converted to a dollar per MWh basis, the "**Deemed Delivered Energy Rate**") equal to (i) the amount of Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (ii) (A) the amount of Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986, as amended (the "Code") as in effect for such Buyer Curtailment Period (and taking into account any then-applicable PTC rate increases under Section 45 of the Code), converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is

delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order (for the avoidance of doubt, without double counting any penalties for which Seller is liable under Section 4.5(k)(i)).

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such SCADA Systems, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the CAISO or Buyer's SC in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Buyer (or its Scheduling Coordinator) shall be responsible for Scheduling all Charging Energy. To the extent such Charging Energy is Scheduled, and upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy is supplied from PV Energy or directly from the CAISO Grid, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy (which originated as PV Energy) to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to

carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then Section 4.5(k) shall apply, and Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. During any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; No Unauthorized Discharging. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as automatically updated in accordance with the definition of Discharging Notice). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, (i) during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and (ii) Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC

or a Governmental Authority or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(f) Consequences of Unauthorized Charging and Discharging. If Seller or anyone under Seller's control charges or discharges the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any failures to comply with charging or discharging dispatches for which there is an express remedy for such failure in Section 4.5(c) or (k) shall not give rise to a Seller breach or Seller liability under this Section 4.5(f)), it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all third party claims for actual costs or losses associated therewith, and be responsible to Buyer for any third party claimed damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols

to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”).

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that (for the avoidance of doubt) otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible to reimburse Buyer for all CAISO charges and penalties payable by Buyer to CAISO and resulting from such deviation.

(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3 or Exhibit P, and is not capable of responding to Automated Dispatches or Alternative Dispatches

such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as provided in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer’s sole remedy arising out of any such incapability of responding to Automated Dispatches or Alternative Dispatches.

(iii)

For each Calculation Interval during the Delivery Term after which the Storage Facility has obtained initial CAISO Certification for the provision of Ancillary Services and is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer’s sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch.

(iv) For clarity, in any case where preceding Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(l) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) during charging and discharging of the Storage Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use that is integral to charging or discharging the Storage Facility (e.g., HVAC, fire suppression systems, telecommunications equipment and battery management systems) may be served by Charging Energy or Discharging Energy, (ii) Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use) except for Auxiliary Use, (iii) the supply of Auxiliary Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iv) Seller shall reimburse Buyer for all Idle Period Auxiliary Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer is used by Seller for Auxiliary Use (including Idle Period Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible for (and shall reimburse Buyer for, as applicable) any and all costs, penalties and charges resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff.

4.6 Reduction in Energy Delivery Obligation. For the avoidance of doubt, and in no way limiting Sections 3.1, 3.8 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. Seller will provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. No Planned Outages shall be scheduled or planned for the Storage Facility during any hours during the period from each June 1 through October 31, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes, *provided* that Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point or to the Storage Facility. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer or to the Storage Facility but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.8 **Storage Facility Availability; Ancillary Services**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] percent ([REDACTED]) (the "**Guaranteed Storage Availability**"), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is Seller's payment of liquidated damages pursuant to Section (f) of Exhibit C.

(c) Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller's payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility's initial CAISO Certification associated with the Installed Storage Capacity, *provided* that Buyer's exclusive remedies for Seller's failure to satisfy such obligation are as set forth in Section 4.5(k).

4.9 **Storage Facility Testing**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Automated Dispatches.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no

later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and for the avoidance of doubt, Buyer shall pay all Charging Energy costs and pay Seller the Renewable Rate for all PV Energy used as Charging Energy. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment of the Renewable Rate to Seller for all PV Energy used as Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), *provided* that Seller fulfills its obligations under Sections 4.10(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which

Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of an error or omission of Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause

and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of PV Energy that is generating by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(i) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(j) Seller's obligations under Sections 3.10 and 4.10(i) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means all PV Energy, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(i) means efforts consistent with and subject to Section 3.12.

4.11 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such

Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

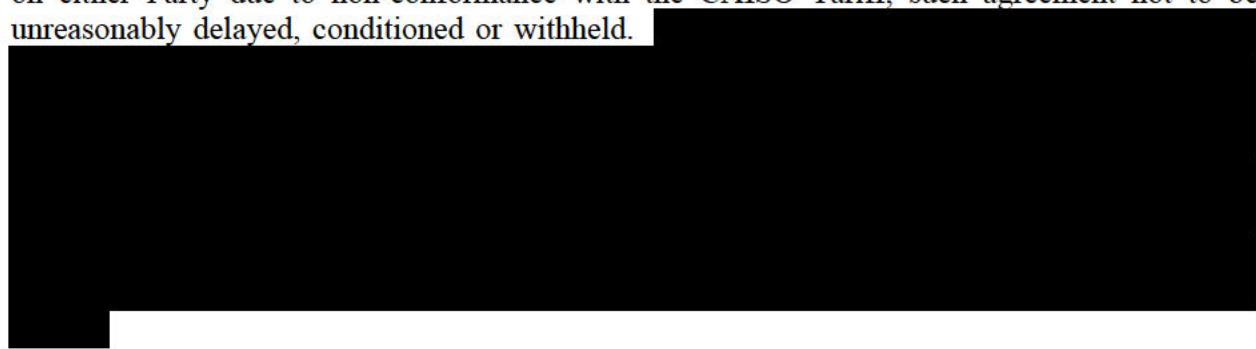
ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a

separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Upon the reasonable request from time to time by Buyer, Seller shall provide Buyer with good faith estimates (based on Prudent Operating Practice) as to the quantities of Station Use and Auxiliary Use consumed by the Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) The foregoing Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Discharging Notices as set forth in the definition of Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.



7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from CAISO to test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present

during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; *provided*, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Energy Out and Energy In as read by the Storage Facility Meter, estimated Idle Period Auxiliary Use, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.**

(a) To secure its obligations under this Agreement, Seller has delivered the original Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

(b) Within forty-five (45) days after the Amendment Effective Date, Seller shall increase the amount of the Development Security to the amount thereof required under the Agreement (after the Amendment Effective Date) by either delivering to Buyer an additional amount of Development Security, or arranging to substitute the existing Development Security with replacement Development Security in the amount now required.

8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security or Performance Security for another permitted form (i.e., cash, Letter of Credit or Guaranty, as applicable); *provided, however*, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer's acceptance of a Guaranty shall be subject, in Buyer's sole discretion, to Guarantor meeting Buyer's credit requirements.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to

the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller both upon request and as indicated below: (a) within forty-five (45) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer's annual report, which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices

of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic [REDACTED] landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; [REDACTED] civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions (including resulting from changes in Law) that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement

in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred twenty (120) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn

in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

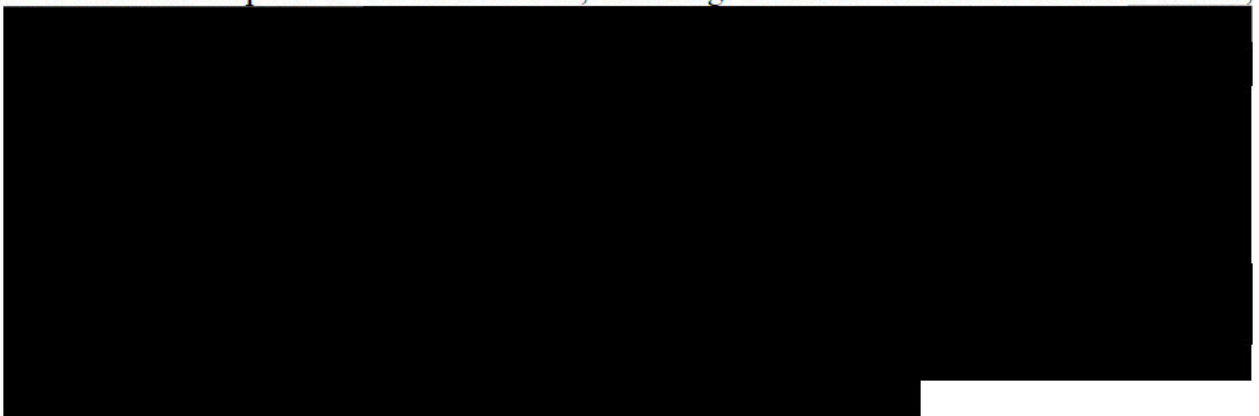
(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller (A) to achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended hereunder, including by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B, by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B, and/or by a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the applicable annual forecast provided by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the weighted average Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;



(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to

replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage and Termination Payments.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest

accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for

the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

If the Agreement is terminated by Buyer prior to the Commercial Operation Date pursuant to Section 2.2(i)(ii)(B), neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such early termination date if either of the proposed rates applicable the Generating Facility or the Storage Facility is lower than the Renewable Rate or the Storage Rate (respectively) applicable hereunder as of such early termination date associated with the ITC and applicable ITC rate set forth in the officer's certificate provided by Seller pursuant to Section 2.2(i), unless Seller first complies with the following provisions of this Section. If this Section applies based on the preceding sentence, then:

(a) if Seller proposes to utilize the ITC for financing some or all of the Generating Facility, Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; and

(b) if Seller proposes to utilize the PTC for financing some or all of the Generating Facility, then:

(1) if Seller or its Affiliate, as applicable, demonstrates to Buyer's reasonable satisfaction, that Seller was only able to utilize the PTC (i) after material costs to reconfigure the Facility or enter into or revise project-related agreements, or (ii) under financing terms materially more costly to Seller than were reasonably available to Seller as of the early termination date), then Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; or

(2) if preceding paragraph (1) does not apply, then Seller shall first offer the Product to Buyer at the same prices as would have been applicable under this Agreement prior to its early termination date (for both the Generating Facility and the Storage Facility) if Seller had elected to use PTC (rather than ITC) for the Generating Facility.

If this Section applies as a result of an Agreement termination under 2.2(i)(ii)(B), then upon Seller or Seller's Affiliates providing Buyer with a written offer to sell the Product on the terms and conditions materially similar to the terms and conditions contained in this Agreement (but at the applicable prices described above), if Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, Seller may transact with third parties.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11

shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 **Seller Pre-COD Termination.** At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date, *provided* that in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 15 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE

OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 4.10(e) 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Amendment Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this

Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Amendment Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of

indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; *provided* that such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the

report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement capable of cure in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request,

Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, *provided* that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

(i) In connection with any financing or refinancing of the Facility by Seller, or as may be required by Buyer to effectuate a Buyer Financing Assignment pursuant to Section 14.5, the Parties agree to provide customary estoppel certificates, including as to the following: (i) the organization, existence and good standing of Buyer or Seller, as applicable, under applicable laws, (ii) Buyer's or Seller's, as applicable, power and authority to execute, deliver and perform the estoppel certificate and this Agreement, (iii) the enforceability of the estoppel certificate and this Agreement, (iv) the occurrence or existence of any default, Event of Default, or Force Majeure under this Agreement, (v) any amendment, modification, supplementation, or assignment of this Agreement, (vi) any pending or threatened action or proceeding against Buyer or Seller, as applicable, that could reasonably be expected to affect Buyer's or Seller's, as applicable, ability to perform this Agreement or affect the enforceability of this Agreement, and (vii) other similar customary matters reasonably requested by an equity provider or tax equity provider, as applicable.

14.3 Permitted Assignment by Seller. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 Shared Facilities; Portfolio Financing. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided, however*, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material

adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon reasonable prior Notice to Seller, *provided* that as conditions to any such assignment: (a) Seller and Buyer (and Seller's financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as Exhibit S ("**Assignment Agreement**"), such agreement not to be unreasonably withheld; (b) at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (i) Buyer's Credit Rating at the time of such assignment (if applicable), and (ii) Baa3 from Moody's and BBB- from S&P; (c) as reasonably requested by Buyer Assignee, Seller shall provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (d) as reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used by (or provided by) Seller in connection with the Facility (an “**IP Indemnity Claim**”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including contractual liability products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Twenty Million Dollars (\$20,000,000). The coverage required under this Section 17.1(a) may be provided through a combination of general liability, umbrella liability and/or excess liability policies. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain employers' liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment has arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement (except as noted above in 17.1(e) with respect to the Construction All-Risk, which will not be procured until the start of construction) and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage except ten (10) days prior notice for cancellation for nonpayment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a

need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Further Permitted Disclosure. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates’ agents, consultants, contractors, trustees, or actual or potential financing parties

(including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that: (i) this Agreement is intended to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code, and (ii) neither Buyer nor any related entity operates the Facility for purposes of Section 7701(e)(4)(i) of the Code.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force

and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or

another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If, after the Effective Date, (a) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered,

then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered (or, in the case of preceding clause (b), to maintain Seller's level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

19.14 **Development Cure Period Claims.**

(a) The Parties acknowledge and agree that as of the Amendment Effective Date: (A) pursuant to Article 10, and Section 4 of Exhibit B, of the Agreement, Seller has previously provided notice of facts or circumstances resulting in significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date and Commercial Operation on or before the Guaranteed Commercial Operation Date, as more particularly set forth in the table immediately below (these facts or circumstances, with any other facts or circumstances satisfying the requirements of Article 10 and Section 4 of Exhibit B of the Agreement that Seller is aware of and could notice to Buyer as of the Amendment Effective Date, the "**Development Cure Period Claims**"); and (B) the Parties intend to resolve all matters with respect to the Development Cure Period Claims (including for potential liquidated damages for unexcused delays which might be owed by Seller to Buyer) by entering into this amended and restated version of the Agreement on the Amendment Effective Date.

| |
|---------------------------------------|
| Development Cure Period Claims |
|---------------------------------------|

| |
|---|
| 1. Facts and circumstances relating to the COVID-19 pandemic arising prior to the Amendment Effective Date and their proximately-caused disruptions to global supply chains, including their effect on labor, materials, and equipment. |
| 2. The [REDACTED] by U.S. Customs and Border Protection on silica-based products made by [REDACTED], and its proximately-caused effects on Seller's ability to obtain photovoltaic modules for the Project. |
| 3. The Anti-Circumvention Investigation initiated March 28, 2022 by the U.S. Department of Commerce, and its proximately-caused effect on Seller's ability to obtain photovoltaic modules for the Project. |
| 4. The Russian invasion of Ukraine and its proximately-caused disruption of supply chains and the availability of key commodities, including nickel and lithium carbonate impacting the availability of BESS equipment. |

(b) As of the Amendment Effective Date, all contractual rights, obligations, consequences, and disputes arising out of or relating to the Development Cure Period Claims are fully and finally terminated, resolved, and settled, by entering into this amended and restated version of the Agreement.. For avoidance of doubt, (a) Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted as a consequence of any Development Cure Period Claims, and (b) Buyer acknowledges and agrees that the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B of this amended and restated version of the Agreement shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller based on facts or circumstances occurring (i) before the Amendment Effective Date that Seller was not aware of or could not notice to Buyer and (ii) on and after the Amendment Effective Date unless proximately caused by events and circumstances giving rise to the Development Cure Period Claims. Seller represents and warrants as of the Amendment Effective Date that, except as set out in the table above, neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Amendment Effective Date.

20SD 8ME LLC, a Delaware limited liability
company

CLEAN POWER ALLIANCE OF
SOUTHERN CALIFORNIA, a California
joint powers authority

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Rexford Solar Farm

Site includes all or some of the following APNs: 339-110-001, 339-050-006, 339-050-007, 339-050-008, 339-050-013, 339-050-004, 339-110-008, 339-110-009, 339-080-016, 339-080-005, 339-080-013, 339-080-015, 339-070-014, 339-070-015, 339-070-016, 321-200-006, 321-190-001, 321-190-002, 321-210-004, 339-070-026, 321-070-014, 321-070-026, 323-040-006, 323-040-008, 323-040-007.

County: Tulare

Zip Code: 93215

Latitude and Longitude: 35.840599, -119.082345

Facility Description: 300 MW(AC) PV + 960 MWh (240 MW(AC) x 4 hours) storage

Delivery Point: SCE Vestal Substation

Storage Facility Meter Point: See Metering Diagram in Exhibit R

Generating Facility Metering Point: See Metering Diagram in Exhibit R

P-node applicable to Facility's CAISO ID: VESTAL_2_B1

Transmission Provider: Southern California Edison Company

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of an engineering, procurement, and construction contract (or similar contract) and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; *provided*, in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Each day for which Seller pays Daily Delay Damages shall automatically extend the Guaranteed Commercial Operation Date, and if Seller achieves the Commercial Operation Date by one or more days prior to the extended Guaranteed Commercial Operation Date, with such number of days by which the Commercial Operation Date precedes the Guaranteed Commercial Operation Date as extended by the payment of Daily Delay Damages (but not by a Development Cure Period) being referred to as the **“Make-up Days”**, then Buyer shall refund to Seller an amount equal to the number of Make-up Days multiplied by the Daily Delay Damages amount, up to but not in excess of the aggregate amount of Daily Delay Damages previously paid. If requested by Seller, the Parties


shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”); and the “**Commercial Operation Date**” means the date set forth in such Notice of the occurrence of the fulfillment of such conditions precedent.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** Independent of Seller's extension rights under Section 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- b. a Force Majeure Event occurs, 
- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred ten (210) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity

is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(h) Renewable Rate and Deemed Delivered Energy Rate. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus the Deemed Delivered Energy Rate (if Seller has elected PTC for the Generating Facility, and if not, the Renewable Rate) for each MWh of Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

(i) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(j) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(k) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%) of the Guaranteed Storage Availability, or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall

not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}}$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\left(\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{Installed Storage Capacity}} \right) \times 1.5$

- (l) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(m) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

(n) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer's SC (which may be Buyer) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(b) Notices. Buyer's SC (which may be Buyer) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail to the personnel designated to receive such information. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO

Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. Subject to Section 4.5(k) of the Agreement, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance, with any applicable NERC reliability standards. This cooperation shall include the

provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F-1

EXHIBIT F-2

FORM OF MONTHLY EXPECTED PV ENERGY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-3

FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT

[MW Per Hour] – [Insert Month]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
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| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-4

FORM OF MONTHLY AVAILABLE STORAGE CAPABILITY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the SP15 Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means Energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period,

provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity. The Storage Facility is physically capable of receiving Charging Energy that was generated by the Generating Facility, as well as Charging Energy from the CAISO Grid that was not generated by the Generating Facility.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge Energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is __ MW AC and shall be the “**Installed Capacity**”;

and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge Energy of ___ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "**Effective Storage Capacity**"); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of ___%, and (ii) a Battery Discharging Factor of ___%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

Exhibit K -

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, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized 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 GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty

and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[]

Attn: []

Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|--|--|
| 20SD 8ME LLC, a Delaware limited liability company ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| All Notices: Street: 4370 Town Center Blvd., Suite 110 City: El Dorado Hills, CA 95762 Attn: Transactions c/o 8minute Solar Energy LLC Phone: (916) 608-9060 Facsimile: (916) 608-9861 Email: transactions@8minute.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: Federal Tax ID Number: [REDACTED] | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: Accounts Payable c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 E-mail: invoice@8minute.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: Transactions c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 Email: transactions@8minute.com | Scheduling: TBD Attn: Phone: Email: |
| Confirmations: Attn: Transactions c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 Email: transactions@8minute.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org |
| Payments: Attn: Account Receivable c/o 8minute Solar Energy LLC Phone: (323) 525-0900 Facsimile: (310) 424-7112 E-mail: transactions@8minute.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: Wells Fargo Bank, N.A. ABA: 121000248 ACCT: [REDACTED] | Wire Transfer: BNK: River City Bank ABA: 121-133-416 ACCT: XXXXXX8042 |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. [Intentionally Blank].

C. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device using a Remote Terminal Unit (RTU), and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

D. Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Guaranteed Storage Capacity continuously for a five and a half (5.5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 85%, continued by the

electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), until the SOC reaches 100%, not to exceed five and a half (5.5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net Energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
 - (4) Stored Energy Level (MWh) and SOC (%).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging real power level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging real power level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging real power level registered during the CT (for purposes of calculating the ramp rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging real power level registered during the CT (for purposes of calculating the ramp rate);

- (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least 80% of one (1) Cycle in the 24-hour period prior to the beginning of the CT.
- (2) Abnormal Conditions. If abnormal operating or grid conditions that prevent the prescribed testing or recordation of any required parameter (including low irradiance) occur prior to or during a CT that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. Except as provided in Part I(D), if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity shall be updated as follows:
 - (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier

of (a) the Storage Facility has reached 100% SOC or (b) five and a half (5.5) hours have elapsed since the Storage Facility commenced charging.

- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five and a half (5.5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC Energy charged to the Storage Facility as measured at the Storage Facility Meter.
- (6) Following an agreed-upon rest period after sunset, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of

0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding, all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date Unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{\text{A}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “available Effective Storage Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the then-current Effective Storage Capacity.

“**Storage Capability**” means the sum the following (taking into account the SOC at the time of calculation): of (i) the Energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the Energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual operating conditions).

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, or (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) Seller shall design the Storage Facility so that the final stamped design drawings used for construction of the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 240 MW charging and [REDACTED] (degrees C). If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example a derate table for temperatures that exceed [REDACTED] (degrees C).

(d) After [REDACTED] Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller's commencement of Facility construction); *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

a. STORAGE FACILITY OPERATING RESTRICTIONS

| | | | |
|--|---|-----------------------|--|
| File Update Date: | 8/26/2020 | | |
| Technology: | Battery Energy Storage | | |
| Storage Unit Name: | Rexford | | |
| A. Contract Capacity | | | |
| Guaranteed Storage Capacity (MW): | 240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| Effective Storage Capacity (MW): | 240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| B. Total Unit Dispatchable Range Information | | | |
| Interconnect Voltage (kV) | 230 kV | | |
| Maximum Storage Level (MWh): | 960 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| Minimum Storage Level (MWh): | 0 at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| Stored energy capability (MWh): | 960 MWh at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| Maximum Discharge (MW): | 240 MW at the Storage Facility Meter when corrected for losses to the Delivery Point | | |
| Maximum Charge (MW): | 240 MW at the Storage Facility Meter | | |
| Annual Average SOC: | [REDACTED] | | |
| Guaranteed Efficiency Rate: | See Cover Sheet | | |
| Maximum Cycles / Contract Year: | [REDACTED] Cycles | | |
| C. Charge and Discharge Rates | | | |
| Mode | Maximum (MW) | Ramp Rate Description | |
| Energy (Charge) | 240 | [REDACTED] | |
| Energy (Discharge) | 240 | [REDACTED] | |
| D. Ancillary Services | | | |
| Frequency regulation is included: | Yes | | |

| | |
|-----------------------------------|-----|
| Spin is included: | Yes |
| E. Additional Restrictions | |
| [N/A] | |

b. GENERATING FACILITY OPERATING RESTRICTIONS

1. The sum of PV Energy plus Discharging Energy shall not exceed the Interconnection Capacity Limit.

EXHIBIT R
METERING DIAGRAM

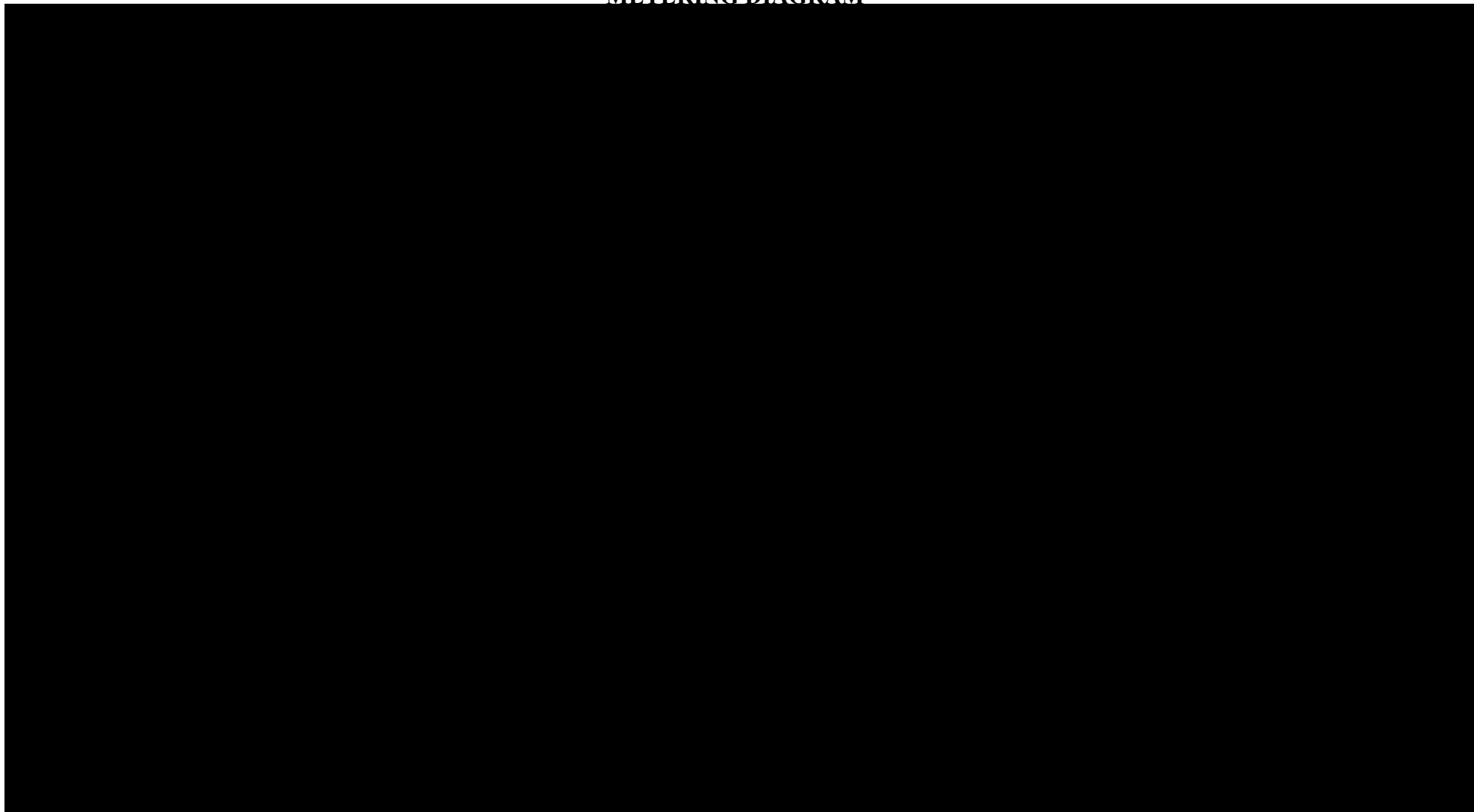


EXHIBIT S

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [_____] by and among [PPA Seller], a [_____] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: Appendix 1 to provide for transfer of RECs.]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.
- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries

such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

- (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;
- (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;
- (3) delivery of a written notice by PPA Seller if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
- (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing

Party

Email: _____

4. Miscellaneous. Sections ☐ [Severability], ☐ [Counterparts], ☐ [Amendments] and ☐ [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By:

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:

Name:

Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Power Purchase Agreement dated [] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [] and extending until [], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the PPA¹

Assigned Product: [Describe and define]

Further Information: [Include, if any]²

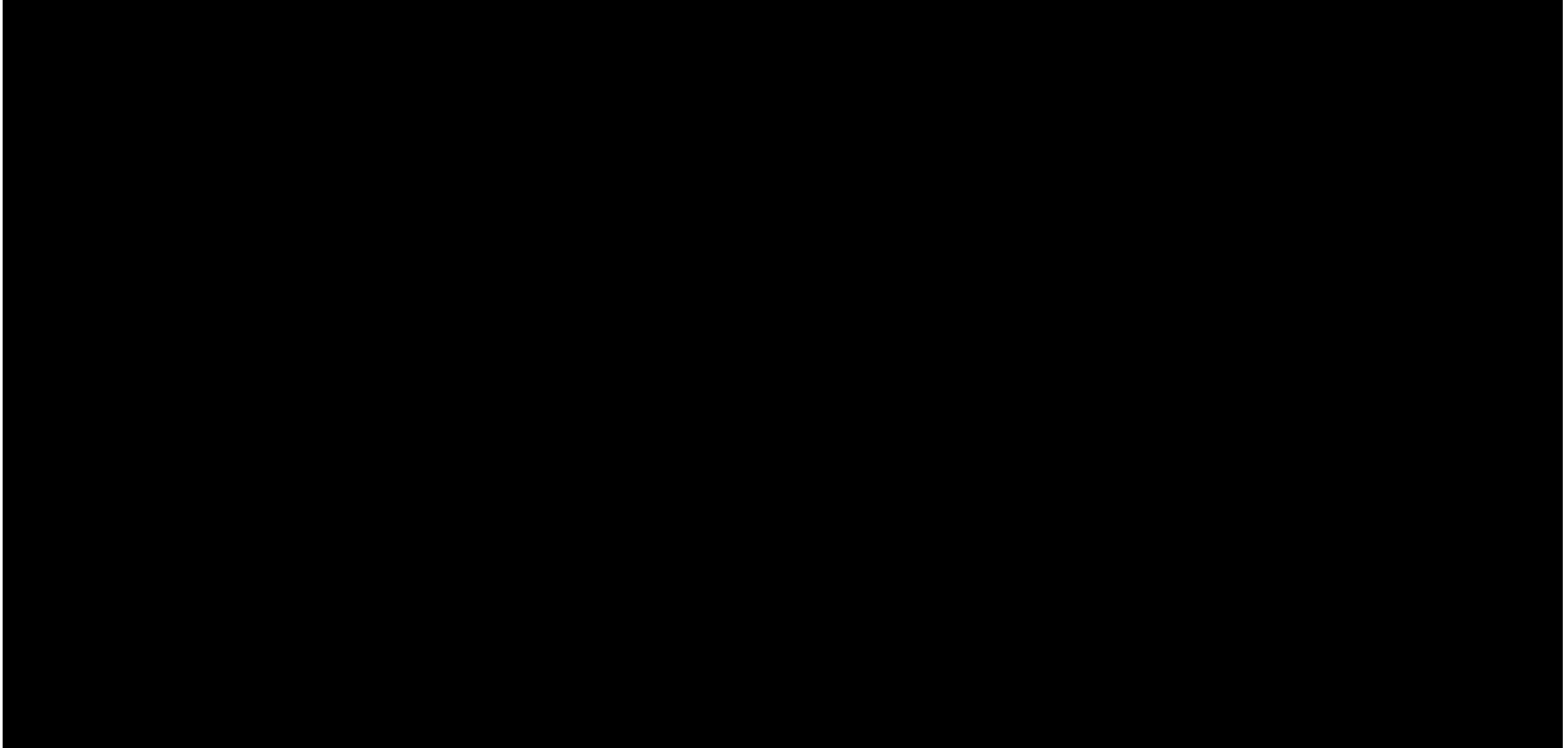
Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

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 T

EXAMPLE CALCULATIONS APPLYING PROVISIONS OF SECTION 4.5(K)(I)



EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Arica Solar, LLC

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: A dedicated and separately metered 93.5 MW AC portion of an approximately 263 MW AC solar photovoltaic generating facility, along with a dedicated and separately metered 71 MW/284 MWh battery energy storage facility, all located in Riverside County, in the State of California, as further described in Exhibit A and subject to adjustments as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Evidence of Site Control | 4/30/2022 |
| Documentation of Conditional Use Permit if required: CEQA [X] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | 3/31/2022 |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreement | 7/15/2021 |
| Financial Close | |
| Expected Construction Start Date | |
| Initial Synchronization | 8/1/2023 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 6/20/2023 |
| Expected Date of CAISO Commercial Operation | 10/1/2023 |
| Expected Commercial Operation Date | 12/1/2023 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 284,054 |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Guaranteed Capacity: 164.5 MW of total Facility capacity

Guaranteed Storage Capacity: 71 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 93.5 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 1 | |

| | |
|----|------|
| 2 | ████ |
| 3 | ████ |
| 4 | ████ |
| 5 | ████ |
| 6 | ████ |
| 7 | ████ |
| 8 | ████ |
| 9 | ████ |
| 10 | ████ |
| 11 | ████ |
| 12 | ████ |
| 13 | ████ |
| 14 | ████ |
| 15 | ████ |

Guaranteed Construction Start Date: 5/31/2023

Guaranteed Commercial Operation Date: 12/1/2023

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|---|
| 1 – 15 | \$████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--------------|
|---------------|--------------|

| | |
|--------|--|
| 1 – 15 | \$ [REDACTED] /kW-mo. (flat) with no escalation |
|--------|--|

Product

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
 - ☒ Energy Only Status: for the Generating Facility
 - ☒ Full Capacity Deliverability Status: for the Storage Facility

Anticipated Flexible Capacity: Amount: 71 MW

Scheduling Coordinator: Buyer

Security Amounts and Guarantor:

Development Security: \$60/kW of Guaranteed PV Capacity plus \$90/kW of Guaranteed Storage Capacity

Performance Security: \$60/kW of the lesser of Guaranteed PV Capacity and Installed PV Capacity plus \$90/kW of the lesser of Guaranteed Storage Capacity and Installed Storage Capacity

Guarantor: N/A on Effective Date

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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 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is

capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Anticipated Flexible Capacity” means the amount and category of Flexible Capacity identified on the Cover Sheet which Seller anticipates as of the Effective Date that the Facility will be qualified by the CAISO to provide to Buyer.

“Approved Forecast Vendor” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the Available Effective Storage Capacity and Available Storage Capability.

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Effective Storage Capacity” has the meaning in Exhibit P.

“Available Generating Facility Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Available Storage Capability” has the meaning in Exhibit P.

“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.

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer

Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff, including in Appendix K - Part A for Certification for Regulation, Part B for Spinning Reserve and Part C for Non-Spinning Reserve, that are applicable to the Facility for the certification and testing for all Ancillary Services, PMAX, and PMIN.

“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 Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV 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 or otherwise ceases to retain the ability to control the decision making of Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” 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).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of

doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating

Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero (0), Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.10(e).

"Delay Damages" means Daily Delay Damages and Commercial Operation Delay Damages.

"Delivery Point" has the meaning set forth in Exhibit A.

"Delivery Term" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Development Cure Period" has the meaning set forth in Exhibit B.

"Development Security" means (a) cash or (b) a Letter of Credit, in the amount set forth on the Cover Sheet.

"Discharging Energy" means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; provided, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, and any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective Flexible Capacity” or **“EFC”** means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Effective Storage Capacity” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate calculated pursuant to Exhibit O by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or the Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts shall not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“Energy In” means AC energy charged (in MWh) to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses).

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” means that total AC energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses).

“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 Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted (i) proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable, and (ii) in accordance with Section 2.7.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Generating Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted for Station Use or by the CAISO for any applicable Electrical Losses.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“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.

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“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.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.5.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.6.

“Guarantor” means, with respect to Seller, any Person that is listed on the Cover Sheet or that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit S, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging 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 sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; provided, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 93.5 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party,

including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“NERC” means the North American Electric Reliability Corporation or any successor entity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. 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, or (iii) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, or has retained Clearway Renewable Operation & Maintenance LLC or a different third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.



“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date; 


“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Storage Facility plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer was less than the Qualifying Capacity of the Storage Facility for such month.

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the

American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, 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; *provided*, Replacement RA may be Resource Adequacy Benefits with an NP26 designation unless Buyer has demonstrably reached Buyer’s limit for such resources in such month.

“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 Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, 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.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the

CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SOC**” or “**State of Charge**” means (a) the level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Storage Capability**” has the meaning in Exhibit P.

“**Storage Capacity Availability Payment True-Up**” has the meaning set forth in Exhibit C.

“**Storage Capacity Availability Payment True-Up Amount**” has the meaning set forth in Exhibit C.

“**Storage Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage Cure Plan**” has the meaning set forth in Section 11.1(b)(iv).

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“Supply Chain Code” has the meaning in Exhibit U.

“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 or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) 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 (ii) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means Clearway Renew LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the 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;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(i) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code, for example by implementing due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains. Seller shall notify Buyer promptly after it becomes aware of any breach, or imminent breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)- day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the

delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Guaranteed PV Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer, increase the Guaranteed PV Capacity upward by up to one and a half (1.5) MW AC. Upon such Notice, each reference to the Guaranteed PV Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.6 **Guaranteed Storage Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer, increase the Guaranteed Storage Capacity upward by up to one and a half (1.5) MW AC. Upon the issuance of such Notice, each reference to Guaranteed Storage Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.7 **Expected Energy Adjustment.** If Seller adjusts the Guaranteed PV Capacity pursuant to Section 2.5, then the Expected Energy shall be adjusted pro rata in proportion to such increase to the Guaranteed PV Capacity without the need for written amendment by the Parties.

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 and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy

generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of

the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products of the Generating Facility on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Guaranteed Storage Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If at any time during the Delivery Term, the Generating Facility qualifies to provide Capacity Attributes or Resource Adequacy Benefits separate from the Storage Facility, Seller shall use commercially reasonable efforts to obtain and deliver such Capacity Attributes or Resource Adequacy Benefits for Buyer’s benefit, provided that Seller shall not be required to incur costs or assume liabilities in doing so beyond de minimis amounts unless Buyer agrees to reimburse Seller for doing so.

(e) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at seventy five (75) days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA,

as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer; provided such failure is not the result of an act or omission of Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if Seller has not obtained certification from the CAISO of the Storage Facility’s Qualifying Capacity, the amount of Qualifying Capacity the Storage 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 Storage Facility plus any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer’s action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”).

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Generating Facility qualifies and is certified by the CEC (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) 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 Generating 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 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying, providing 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 (x) during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity

(**"Compliance Expenditure Cap"**).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the **"Compliance Actions."**

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the **"Accepted Compliance Costs"**), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy to commence during the sixth (6th) Contract Year; *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 (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Except as otherwise provided herein, Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging 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 PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) **Energy Products.** If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including 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 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Energy**. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of PV Energy and Available Capacity**. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) Available Effective Storage Capacity, and (iv) Available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

(c) **Day-Ahead Forecast**. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts**. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform

Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided* that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative

LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy. The Parties acknowledge and agree that, subject to Section 3.13, Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility; however, for purposes of CAISO financial settlements, the Parties understand that the CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. During the Delivery Term, Buyer will have the right to direct Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued subject to the requirements and

limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay Buyer the Renewable Rate for all Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Buyer's SC or the CAISO to provide Discharging Notices to Seller, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, or as is expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and

be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then such shall be a failure to perform a material covenant under Section 11.1(a)(iii).

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and Buyer shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Storage Rate multiplied by the Effective Storage Capacity, pro-rated on a daily basis.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols

to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”).

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.**

(i) Unless otherwise agreed to in writing by Buyer in its sole discretion, 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); *provided* 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. 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. Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes. Notwithstanding anything in this Agreement to the contrary, Seller shall not be required to provide Notice to Buyer of maintenance of the Generating Facility occurring during nighttime hours not otherwise impacting the Storage Facility.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event prevents Seller from delivering Product.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV 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) PV 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* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed the lower of (x) twenty percent (20%) of the Expected Energy for the previous Contract Year or (y) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

4.8 **Storage Facility Availability; Guaranteed Efficiency Rate; Ancillary Services**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] percent ([REDACTED]%) (the "**Guaranteed Storage Availability**"), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment pursuant to Section (d) of Exhibit C.

(c) Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller's payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility's initial CAISO Certification associated with the Installed Storage Capacity. For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then as the exclusive remedy the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity or efficiency rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no

later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer at the Renewable Rate for all Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), *provided* that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall

be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy 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 PV Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

4.11 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use 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.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with ownership of the Facility and to any and all Tax Credits or other tax benefits associated with ownership of the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return that this Agreement is anything other than a "service contract" within the meaning of Section 7701(e) of the Code or in any other filings suggesting that this Agreement is anything other than a purchase of the Product from the Seller.

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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs, and (iv) provide that any reduction in Shared Facility capacity (excluding, for avoidance of doubt, any reduction attributable to a Curtailment Order) shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction.

ARTICLE 7 METERING

7.1 **Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter all Station Use (other than Station Use associated with transformers and power converters which are supplied from the AC terminals, for which Seller shall provide Buyer with good faith estimates as to the quantities of such Station Use consumed by the Facility upon Buyer's reasonable request). All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be

programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA, and Replacement Product delivered to

Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any

arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G, and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect; *provided*, Seller shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form; *provided, however*, that a Guaranty may not be provided as 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. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit S. 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) the later of (i) 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), or (ii)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, including COVID-19; 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 except to the extent such event is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their

subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties' performance hereunder may not be immediately or readily ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 and Section 10.1 once any impacts of COVID-19 that constitute a Force Majeure Event result in any delay or nonperformance hereunder.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period 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 Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may

terminate this Agreement upon Notice to the other Party; *provided*, Seller shall be entitled to six (6) additional months to remedy the Force Majeure Event if Seller has been unable to remedy the Force Majeure Event within the original twelve (12)-month period despite exercising diligent efforts and Seller provides Notice to Buyer at least sixty (60) days prior to the expiration of the original twelve (12) month period that contains (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, and (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably be restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section 10.4(b)(i). Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

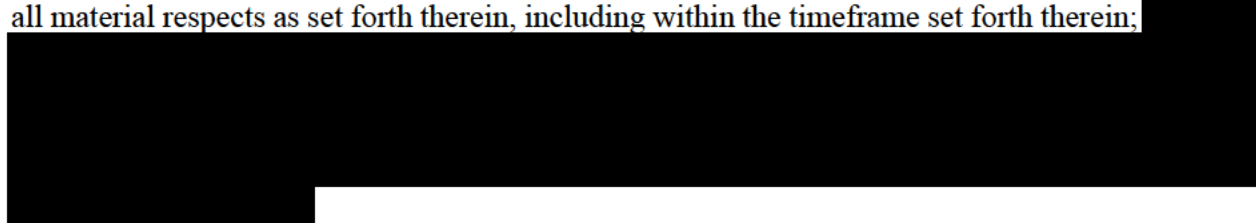
(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve 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) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity for the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (other than to the extent additional time is needed to mobilize construction at the Site, receive any necessary permits

to implement such Storage Cure Plan, or remedy any serial defects of the Storage Facility, in which case, such one hundred eighty (180) day cure period may be extended to a maximum of three hundred sixty (360) days) (a “**Storage Cure Plan**”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;



(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a Guarantor meeting the

criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or

Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage Payment; Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) (Seller's Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, less 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, allocable to the Facility (including in connection with acquisition, development, financing and construction thereof, but excluding any costs and expenses associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility)) 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 a 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 Facility-related assets (which exclude, for clarity, any assets associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility) if sold individually, or (b) the Facility, whichever is greater, regardless of whether or not any Seller asset or the Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's Facility-related assets or the Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. 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 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR

PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Neither Seller nor its Affiliates have received notice from or, to Seller's knowledge after due inquiry, been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the

Project or the delivery of materials necessary to complete the Project, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 Buyer's Representations and Warranties. As of the Effective Date, and in the case of Section 13.2(h) as of each date on which Buyer delivers financial statements to Seller pursuant to Section 8.10(a)(i)(B) (or, if Buyer's means of satisfying Section 8.10(a)(i) is through the public posting of financial statements, then as of the date Buyer publicly posts such financial statements), Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 General Covenants. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 Workforce Development. The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, 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(s) to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit T ("**Consent to Collateral Assignment**") and reasonably requested estoppel certificates.

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:

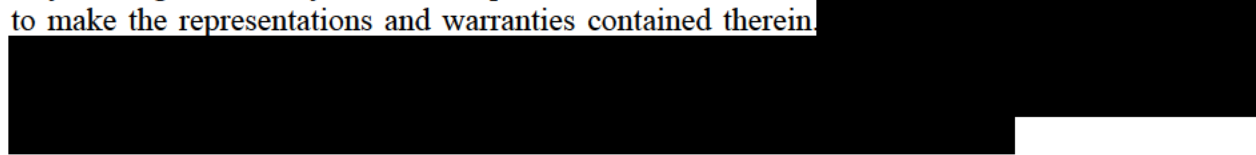
- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides 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 or cash 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 thirty (30) days' notice by delivering a Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit L ("**Assignment**").

Agreement”), *provided* that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer’s Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody’s and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5 and Buyer and Seller’s ability to make the representations and warranties contained therein.



ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from,

or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used 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* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance

(a) **General Liability**. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal & advertising injury insurance, in a minimum amount of Two Million Dollars

(\$2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars (\$5,000,000), which provides contractual liability in said amount, specifically covering Seller's liabilities arising under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. For clarity, limits of liability under this Section 17.1(a) may be met with umbrella/excess liability policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor Insurance. Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility and each other contractor Seller directly contracts with in connection with the Facility to carry (i) commercial general liability insurance with liability limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits no less than one million dollars (\$1,000,000) per occurrence. The contractors shall name Seller as an additional insured (except for workers' compensation) to insurance carried pursuant to clauses (f)(i) and (f)(iii). The contractors 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 thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least ten (10) 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, then, without restricting Buyer's remedies under Article 11, applicable Law or otherwise, Seller shall (in accordance with the applicable provisions of Section 16.2) indemnify and defend Buyer against all claims and liabilities for which, and to the same extent that, Buyer would have been covered by Seller's insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential

Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by

reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ARICA SOLAR, LLC

By: _____
Name: _____
Title: _____

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA, a California joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Arica Project

Site includes all or some of the following APNs:

| |
|-----------|
| 810110014 |
| 811160006 |
| 811160014 |
| 811190010 |
| 811190011 |
| 811190012 |
| 811190015 |
| 811190016 |
| 811211001 |
| 811211002 |
| 811212001 |
| 811222001 |
| 811231006 |
| 811190017 |

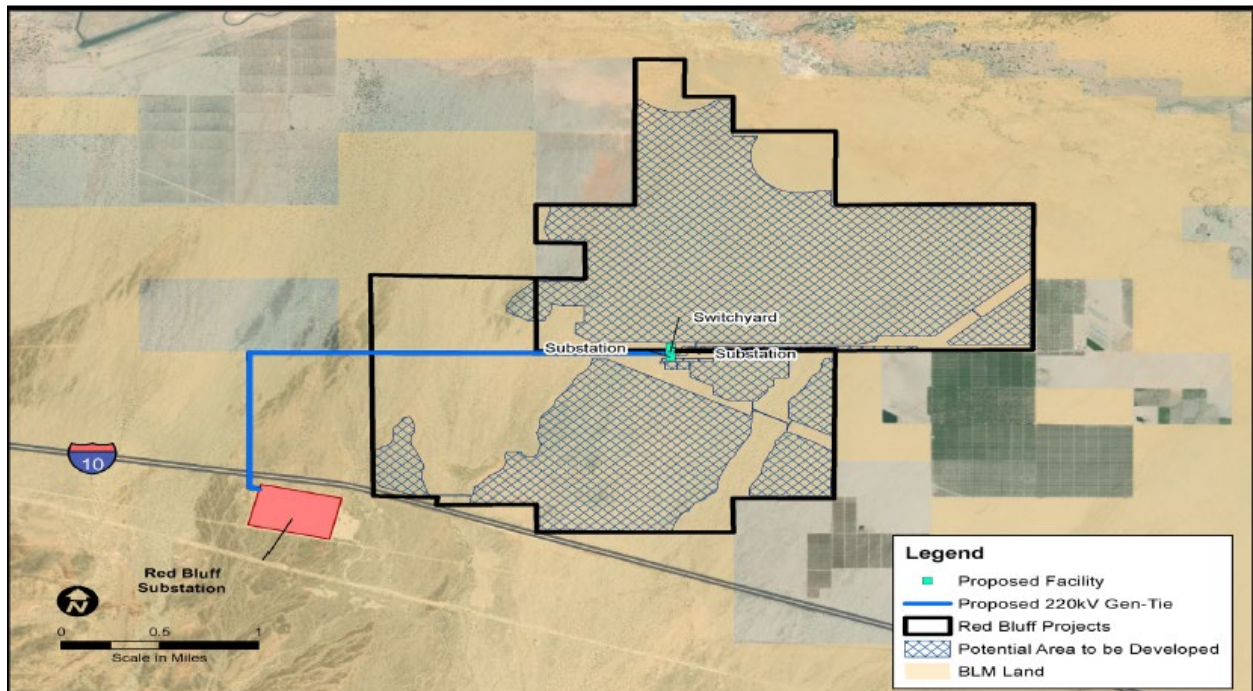
City: Desert Center

County: Riverside County

Zip Code: 92239

Latitude and Longitude: 33.698958, -115.312892

Facility Description: A dedicated and separately metered 93.5 MW AC portion of an approximately 263 MW AC solar photovoltaic generating facility, along with a dedicated and separately metered 71 MW/284 MWh battery energy storage facility, all located in Riverside County, in the State of California, as depicted on the following Site Diagram, and subject to adjustments as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.



Delivery Point: Southern California Edison's Red Bluff substation

Generating Facility Metering Points: See [Exhibit R](#)

Storage Facility Metering Points: See [Exhibit R](#)

P-node: As established by CAISO NRI process

Transmission Provider: Southern California Edison

Additional Information: n/a

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 commencement of 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 notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
 - b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date and, effective upon such notice, the Guaranteed Construction Start Date shall be automatically extended for the number of days included in such notice. Seller may extend the Guaranteed Construction Start Date more than once by the payment of Daily Delay Damages, provided the total duration of such delays shall not exceed one hundred twenty (120) days. If Seller achieves Construction Start on or before the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Buyer and not previously refunded by Buyer.
2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. Seller may extend the Guaranteed Commercial Operation Date more than once by the payment of Commercial Operation Delay Damages, provided the total duration of such delays shall not exceed ninety (90) days. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b). If a Development Cure Period overlaps any days for which Seller has paid Commercial Operation Delay Damages to extend the Guaranteed Commercial Operation Date, Buyer shall refund to Seller the Commercial Operation Delay Damages for each such day, 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 such circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or

- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor;

Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

"Efficiency Rate Factor" means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 100%

- (B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

$$\text{Efficiency Rate Factor} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

- (C) If the Efficiency Rate is less than 75%, then:

$$\text{Efficiency Rate Factor} = 0$$

(ii) **Storage Capacity Availability Payment True-Up**. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the **“Storage Capacity Availability Payment True-Up”**), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

$$\text{Capacity Availability Factor} = 0$$

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective

Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, or if the sum of (a) YTD Annual Storage Capacity Availability and (b) Force Majeure Unavailability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{YTD Annual Storage Capacity Availability}}$$

- (C) If the sum of (a) YTD Annual Storage Capacity Availability and (b) Force Majeure Unavailability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = ((\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 2.0) - (\text{Force Majeure Unavailability})$$

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

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 PV 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 | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-4

MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes, provided that such value shall not be less than \$10/MWh nor greater than \$50/MWh

D = the Renewable Rate, in \$/MWh

E = The 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: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes, in an amount not to exceed the lower of (i) twenty percent (20%) of the Expected Energy for the previous Contract Year or (ii) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

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* that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___ [DATE] ____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.
7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is ____ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of ____ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is ____ MW AC and shall be the “**Installed Capacity**”; and

(d) Such Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) Such Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A 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. [XXXXXXXX]

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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, electronic messaging (e-mail), or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with

this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among [PPA Seller], a [] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”) [NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller 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 (as defined in the PPA) 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 Section 11.1(a)(iv) occurs with respect to Financing Party; or
 - (4) delivery of a written notice by Financing Party if any of the events described in Section 11.1(a)(iv) occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 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 19.2, 19.4, 19.5, and 19.7 of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:
Name:
Title:

By:
Name:
Title:

FINANCING PARTY

By:
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [____], 2021 by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [____] and extending until [____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA¹

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 Term 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 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line") | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|---|---|
| <i>ARICA SOLAR, LLC, a Delaware limited liability company</i> (“Seller”) | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”) |
| All Notices: Street: 4900 Scottsdale Road, Suite 5000 c/o Solar Asset Management LLC City: Scottsdale, AZ 85251 Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com With a copy to: Street: 5790 Fleet Street, Suite 200 City: Carlsbad, CA 92008 Attn: General Counsel Phone: 760-710-2187 E-mail: legal@clearwayenergy.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 E-mail: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: N/A Federal Tax ID Number: [81-3659562] | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Scheduling: TBD Attn: Phone: E-mail: |
| Confirmations: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: nkeefe@cleanpoweralliance.org |
| Payments: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: ABA: ACCT: | Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: XXXXXX8042 |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured (or calculated) and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

- (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy and Energy Out to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Energy Out (as reported under Section II.D(7) above) divided by the total amount of Energy In (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

The initial Supplementary Capacity Test Protocol outlined below shall be binding on the Parties until Section II.H modifies this Part III.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the Energy In.
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.

- (11) Record and store the Energy Out from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.
- (1) The resulting Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(11) above) divided by the total amount of Energy In (as reported under Section III.A(5) above), and expressed as a percentage, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow 35.5 MVAR for ten (10) minutes.
 - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow -35.5 MVAR for ten (10) minutes.

- (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

where:

“**A**” is the “Available Effective Storage Capacity” (as defined below), which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor (as measured as of the most recent Storage Capacity Test)) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor (as measured as of the most recent Storage Capacity Test)). In calculating Storage Capability, the “available battery charging capability” and “available

battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines) but Storage Capacity shall never exceed the Effective Storage Capacity x four (4) hours. The charging and discharging capability (in MWh) in a Calculation Interval shall be measured according to Section (b) of this Exhibit P.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “Available Effective Storage Capacity,” and “Available Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, including compliance with the Operating Restrictions as set forth herein, the calculations of Available Effective Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity taking into account Electrical Losses to the Delivery Point is less than 71 MW charging and 71 MW discharging at ■■■°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate based on manufacturer’s specifications to the applicable Calculation Interval.

(d) After 365 Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| | | | |
|--|--|------------------------------|--|
| File Update Date: | [XX/XX/20XX] | | |
| Technology: | Lithium-ion | | |
| Storage Unit Name: | [Unit Name and Number] | | |
| A. Contract Capacity | | | |
| Guaranteed Storage Capacity (MW): | 71 | | |
| Effective Storage Capacity (MW): | 71 | | |
| B. Total Unit Dispatchable Range Information | | | |
| Interconnect Voltage (kV) | 144 | | |
| Maximum Storage Level (MWh): | 284 | | |
| Minimum Storage Level (MWh): | 0 | | |
| Stored energy capability (MWh): | 284 | | |
| Maximum Discharge (MW): | 71 | | |
| Maximum Charge (MW): | 71 | | |
| Guaranteed Efficiency Rate: | See Guaranteed Efficiency Rate | | |
| Maximum energy throughput (BET) (MWh/year): | [REDACTED] | | |
| C. Charge and Discharge Rates | | | |
| Mode | Maximum (MW) | Ramp Rate (MW/s) Description | |
| Energy (Charge) | 71 | [REDACTED] | |
| Energy (Discharge) | 71 | [REDACTED] | |
| D. Ancillary Services | | | |
| Frequency regulation is included: | Yes, subject to Operating Restrictions | | |
| Spin is included: | Yes | | |

II. ADDITIONAL OPERATING RESTRICTIONS

1. **Annual Cycles:** Maximum of [REDACTED] Cycles per Contract Year.
2. **Daily Dispatch Limits:** [REDACTED] Cycles per day.
3. **Grid Charging:** The Storage Facility shall not use grid energy to provide Charging Energy,

subject to Section 3.13.

4. **Scheduling Controls:** All manual dispatch commands must use the Seller-supplied EMS.
5. **Resting State of Charge:** The average resting state of charge per Contract Year must be below [REDACTED] percent ([REDACTED]%).
6. **Interconnection Capacity Limit:** Dispatch cannot cause Facility Energy to exceed the Interconnection Capacity Limit.

EXHIBIT R
METERING DIAGRAM

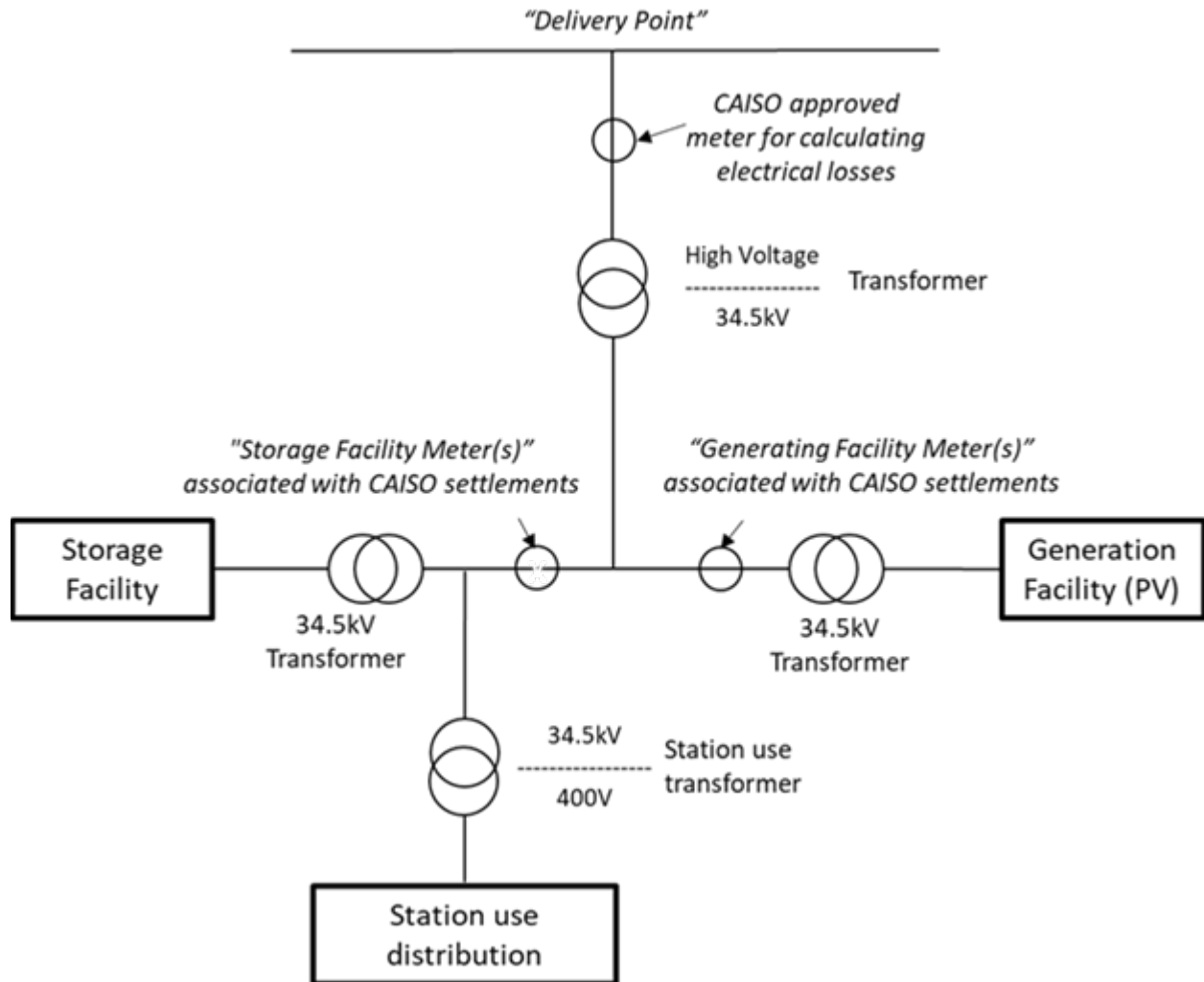


EXHIBIT S

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [_____] a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified, the “**PPA**”) dated as of [_____] 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms, unless Buyer has provided Notice to Seller pursuant to Section 8.8 of the Agreement that the Guaranteed Amounts have not been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent that insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it

has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument

executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT

TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Consent”), dated as of [], is executed by **CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**, a California joint powers authority (together with its successors, designees and assigns, “Contracting Party”), [], a Delaware limited liability company (together with its successors, designees and assigns, “Collateral Assignor”), and [], in its capacity as the collateral agent (together with its successors, designees and assigns in such capacity, “Collateral Agent”) for the Secured Parties (as defined in the Financing Agreement described below). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms, directly or by reference, in Exhibit A to the Financing Agreement.

RECITALS

A. [], a Delaware limited liability company (“Class B Member”), and [], a Delaware limited liability company (“Seller”, and jointly and severally with Class B Member, the “Borrower”) has entered into that certain Financing Agreement, dated as of [] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), with the financial institutions from time to time party thereto as lenders (the “Lenders”), [], as Collateral Agent for the Secured Parties and as Administrative Agent, the Issuing Banks (each as defined therein), and any other agents and Persons party thereto, pursuant to which, among other things, the Secured Parties have agreed to extend financing to Borrower with respect to the construction, ownership, operation and maintenance of the Project (defined below).

B. Borrower’s subsidiaries are operating, and constructing and will operate, a solar photovoltaic power plant for the generation of electrical energy and storage and all related ancillary systems, located or to be located in California, and as further described in the Financing Agreement as the “Project” (the “Project”).

C. Collateral Assignor has entered into that certain Power Purchase and Sale Agreement, dated as of [] (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, the “Assigned Agreement”) with Contracting Party.

D. As a condition to the extension of credit under the Financing Agreement, Collateral Assignor has entered into that certain Guaranty and Security Agreement, dated as of [] with Collateral Agent (as amended and in effect from time to time, the “Security Agreement”), pursuant to which Collateral Assignor has collaterally assigned and granted to Collateral Agent for the benefit of the Secured Parties a first-priority security interest in all of Collateral Assignor’s right, title and interest in, to and under the Assigned Agreement, including all of Collateral Assignor’s rights to receive payments under or with respect to the Assigned Agreement and all payments due and to become due to Collateral Assignor under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the

“Assigned Collateral Interest”), as collateral security for satisfaction of all Obligations (as defined in the Financing Agreement) under the Financing Agreement and the other related financing documents (the “Financing Documents”).

E. It is a requirement under the Financing Agreement and the other Financing Documents that Contracting Party and the other parties hereto shall have executed this Consent.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything to the contrary in the Assigned Agreement, as follows:

1. Consent and Agreement. Contracting Party:

(a) waives the Collateral Assignor’s requirement to provide prior written notice to the Contracting Party at least fifteen (15) business days prior to the assignment of the Assigned Collateral Interest pursuant to Section 14.3 of the Assigned Agreement, and acknowledges and consents in all respects to the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, pursuant to the Security Agreement and the terms hereof;

(b) acknowledges the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Agreement and the other Financing Documents, upon notice to Contracting Party that an Event of Default has occurred and is continuing under the Financing Agreement or any other Financing Documents, to cure any defaults of Collateral Assignor, make all demands, give all notices, take all actions, and exercise all rights of Collateral Assignor under the Assigned Agreement and agrees to accept any such exercise;

(c) agrees not to: (i) cancel, terminate, suspend performance or waive compliance under the Assigned Agreement, except as provided in the Assigned Agreement or by operation of law and, in any event, except as provided in Section 4 of this Consent; (ii) consent to or accept any cancellation, termination, suspension or waiver of the Assigned Agreement by Collateral Assignor without the prior written consent of Collateral Agent; or (iii) assign, transfer or otherwise dispose of (by operation of law or otherwise) any part of its right, title or interest in the Assigned Agreement, without the prior written consent of Collateral Agent (such consent not to be unreasonably withheld, conditioned or delayed);

(d) agrees not to amend, supplement or modify the Assigned Agreement in any material respect (excluding routine or immaterial change orders or amendments), unless Contracting Party provides the Collateral Agent with the proposed amendment, supplement, waiver, other modification or consent not less than fifteen (15) Banking Days prior to the proposed date of the execution thereof and the Collateral Agent consents in writing thereto (such consent not to be unreasonably withheld, conditioned or delayed); and

(e) agrees to promptly deliver to Collateral Agent duplicates or copies of all material notices of or with respect to actual or threatened litigation or arbitration, material default, suspension, material waiver or termination delivered by Contracting Party to Collateral Assignor under or pursuant to the Assigned Agreement.

2. Collateral Assignor's Acknowledgement. Collateral Assignor acknowledges and agrees that Contracting Party is authorized to perform its obligations under the Assigned Agreement in accordance with its terms upon notice by Collateral Agent, which notice shall be deemed to be in compliance with Collateral Agent's rights under the Security Agreement and this Consent without any obligation for investigation on the part of Contracting Party, and that Contracting Party shall bear no liability to Collateral Assignor in connection therewith.

3. Subsequent Transferee.

If Collateral Agent gives prior written notice to Contracting Party that an Event of Default under the Financing Agreement or any other Financing Document has occurred and is continuing and Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement and the Security Agreement with respect to the foreclosure (whether judicial or nonjudicial) or sale of the Assigned Collateral Interest (or any portion thereof), Collateral Agent acknowledges and agrees it shall not assume, sell or otherwise dispose of the Assigned Collateral Interest (or any portion thereof) or any of Collateral Agent's rights under or to the Assigned Collateral Interest (or any portion thereof, and whether by foreclosure sale or other liquidation sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Collateral Agent or any third party, as the case maybe, assuming, purchasing or otherwise acquiring the Assigned Agreement (or any portion thereof) (i) cures any and all defaults of Collateral Assignor under the Assigned Agreement (excluding any Personal Defaults (as defined below) that shall be deemed cured upon such foreclosure or assumption); (ii) pays Contracting Party any and all sums due and payable by Collateral Assignor to Contracting Party prior to any such assumption, sale or disposition, including but not limited to any and all damages owed by Collateral Assignor to Contracting Party; (iii) executes and delivers to Contracting Party a written assumption in which such proposed transferee (aa) expressly assumes all of Collateral Assignor's rights and obligations under the Assigned Agreement, (bb) expressly agrees to be bound by the terms of the Assigned Agreement to the same extent the Collateral Assignor is thereunder, and (cc) agrees it is subject to Contracting Party's rights and defenses under the Assigned Agreement and applicable law; and (iv) is a Permitted Transferee (collectively, a "Subsequent Transferee"). A "Permitted Transferee" means (i) the Collateral Agent; (ii) a proposed transferee (or its ultimate parent) who has a tangible net worth that is equal to or in excess of \$150,000,000, or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's, and has at least two (2) years of experience owning or operating power generating facilities of a size equal to or in excess of 100 MW ac or has hired a manager or operator with such qualifications to operate the Project; or (iii) any other person approved by the Contracting Party. As used herein, Personal Defaults mean defaults that are personal to the Collateral Assignor and not curable by the Collateral Agent, such as the bankruptcy or insolvency of the Collateral Assignor.

(a) Collateral Agent further acknowledges that the collateral assignment of the Assigned Collateral Interest is for security purposes and is subject to any defenses or causes of action Contracting Party may have against Collateral Assignor and that Collateral Agent does not have the right under the Assigned Agreement to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the Financing Agreement or other Financing Documents and to the extent that Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement (each, a “Financing Default”), in which case Contracting Party shall (i) recognize the Subsequent Transferee as its counterparty under the Assigned Agreement and (ii) continue to perform its obligations under the Assigned Agreement in favor of the Subsequent Transferee; provided, however, that Collateral Assignor’s obligations under the Assigned Agreement shall continue in their entirety in full force and effect, and Contracting Party shall remain fully liable for all of its obligations under or relating to the Assigned Agreement. A Subsequent Transferee shall have the right to assign all of its interest in the Assigned Agreement to any person, subject to the limitations set forth in Section 3(a)(i)-(iii).

(b) Contracting Party acknowledges and agrees that, notwithstanding anything to the contrary in the Assigned Agreement, none of (i) the assignment of the Assigned Agreement pursuant to the Security Agreement, (ii) the foreclosure or any other enforcement action (any such action an “Enforcement Action”) undertaken by Collateral Agent in respect of its rights under the Security Agreement or any other related pledge agreement or mortgage (including any foreclosure on the direct or indirect membership interests of the Collateral Assignor), (iii) the acquisition of the rights of Collateral Assignor under the Assigned Agreement as a consequence of any Enforcement Action by Collateral Agent or any successor, assignee, designee or purchaser (each of whom shall be subject to the requirements in Section 3 of this Consent) (or acceptance of an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action) or (iv) the assignment of the Assigned Agreement by Collateral Agent to a successor, assignee, designee or purchaser (each of whom shall be subject to the requirements in Section 3 of this Consent) following a purchase after an Enforcement Action or following an absolute assignment thereof in lieu of an Enforcement Action, in and of itself shall constitute a default by Collateral Assignor under the Assigned Agreement or shall result in termination thereof; provided, however, that nothing in this Section 3(c) shall preclude Contracting Party from declaring an event of default by the Collateral Assignor under the Assigned Agreement or a termination thereof for reasons other than those set forth in this Section 3(c).

Right to Cure. In the event of a default or breach by Collateral Assignor in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend performance under the Assigned Agreement (hereinafter, a “Default”), Contracting Party shall not cancel, suspend or terminate the Assigned Agreement or its performance thereunder until it first gives written notice of such Default to Collateral Agent and affords Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) (a) a period of twenty (20) days from the Collateral Agent Default Notice Date (defined below) to cure such Default if such Default is the failure to pay amounts to Contracting Party which are due and payable under

the Assigned Agreement or (b) with respect to any other Default, the same cure period applicable to the Default in the Assigned Agreement; provided, if Collateral Agent provides notice to Contracting Party within such applicable cure period that Collateral agent intends to cure such non-payment Default but reasonable anticipates that it will require additional time as set forth in a cure plan provided to Contracting Party in accordance with Section 14.2(b) of the Assigned Agreement, then Collateral Agent shall have a reasonable opportunity, but no more than ninety (90) days from the Collateral Agent Default Notice Date (defined below) to cure such nonpayment Default (provided that during such cure period Collateral Agent or Collateral Assignor continues to perform each of Collateral Assignor's other obligations under the Assigned Agreement capable of being cured). The "Collateral Agent Default Notice Date" shall mean the later to occur of (Y) receipt of such notice and (Z) the expiration of the cure periods available to the Collateral Assignor under the Assigned Agreement. Notwithstanding anything to the contrary herein, if and only if the Default is a Personal Default, then, notwithstanding any right that Contracting Party may have to terminate the Assigned Agreement, Collateral Agent shall be entitled to assume the rights and obligations of Collateral Assignor within the cure period described in Section 4(b) (as extended pursuant to the following sentences), and provided that such assumption has occurred within such period and Collateral Agent has commenced taking the actions contemplated by the next sentence which it hereby acknowledges and agrees are required to cure a Personal Default (or for such Personal Default to be deemed cured), Contracting Party shall not be entitled to terminate the Assigned Agreement as a result of such Default. Upon the occurrence of an event of Personal Default whereby possession of the Project is necessary to cure such Personal Default, and Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) declares an Event of Default under the Financing Agreement or any other Financing Document and commences foreclosure proceedings or any other proceedings necessary to take possession of such Project within thirty (30) calendar days of the Collateral Agent Default Notice Date, Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) will be allowed a reasonable period to complete such proceedings, but in no event more than one hundred twenty (120) days from Collateral Agent Default Notice Date provided that the Collateral Agent cures all monetary Defaults upon completion of such foreclosure proceedings, including but not limited to payment by Collateral Agent of any and all damages owed by Collateral Assignor to Contracting Party. After taking possession of such Project, Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) shall commence curing such breach or Default within twenty (20) days after having possession of such Project and thereafter diligently to pursue such cure to completion within the period that is one hundred twenty (120) days from the Collateral Agent Default Notice Date. If Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of Collateral Assignor from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, but in no event shall the period be extended beyond the date that is 180 days from the Collateral Agent Notice Default Date ("Tolled Cure Period"); provided, however, that if at any time during any applicable cure period, the Collateral Agent or its successor(s), assignee(s), or designee(s) has determined that it will no longer take any action to cure such breach or Default, the Collateral Agent shall promptly notify the Contracting Party in writing of such

determination and, following such notice, the Contracting Party shall have the right to suspend or terminate the Assigned Agreement or exercise its other remedies for such breach or Default, all in accordance with the terms of the Assigned Agreement. The Parties agree that notwithstanding anything to the contrary set forth herein, Contracting Party shall have the right to take any action permitted under the Assigned Agreement in respect of an event of default thereunder after the expiration of the cure periods set forth above or at any time during the Tolled Cure Period for a Personal Default if the Collateral Agent or Collateral Assignor fails to perform each of Collateral Assignor's other obligations under the Assigned Agreement (subject to the applicable cure periods set forth in Section 4(a) or (b) for any such other Default) and, for the avoidance of doubt, the extended cure periods set forth above that apply to periods of time in addition to the period of up to 90 days from the Collateral Agent Default Notice Date, apply solely to Personal Defaults and not to any other default under the Assigned Agreement.

4. In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding of the Collateral Assignor, to the extent permitted by applicable law, Contracting Party and Collateral Assignor shall enter into a new contract with the Collateral Agent or its transferee, assignee or designee. Such new contract shall be on the same terms and conditions as the original Assigned Agreement for the remaining term of the original Assigned Agreement before giving effect to such termination.

5. No Liability. Contracting Party acknowledges and agrees that neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) or other representative of Collateral Agent or the Secured Parties) shall have any liability or obligation under the Assigned Agreement as a result of exercising its rights under this Consent (other than as a Subsequent Transferee under Section 3 of this Consent), the Financing Agreement or any other Financing Document, and neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) or other representative of Collateral Agent or the Secured Parties) shall be obligated or required to perform any of Collateral Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Financing Agreement or any other Financing Document, except during any period in which such Person has elected to become a Subsequent Transferee pursuant to Section 3 of this Consent, in which case such Subsequent Transferee shall assume all of Collateral Assignor's rights and obligations under the Assigned Agreement in accordance with Section 3 of this Consent, provided, that the obligations of such Subsequent Transferee shall be no more but no less than that of Collateral Assignor under the Assigned Agreement

6. Liability Agreement. Collateral Assignor agrees to pay, and to hold Contracting Party harmless from, any and all balance owed, loss, liability, damage, claim, cost or expense, including without limitation, any direct, indirect or consequential loss, liability, damage, claim, cost or expenses, including legal fees and expenses (collectively, "Losses") in connection with or arising out of this Consent, other than Losses arising out of or relating to a breach or repudiation of Section 1 or Section 10 hereof.

7. Payment of Monies. Commencing on the date of this Consent and until the earlier

to occur of the (i) Term Conversion Date and (ii) Discharge Date, Contracting Party agrees to make all payments (if any) required to be made by it under the Assigned Agreement in U.S. dollars and in immediately available funds directly to the account described immediately below, or, if Contracting Party has been notified in writing by Collateral Agent (with a copy to Collateral Assignor) that an Event of Default under the Financing Agreement has occurred and is continuing, to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to Contracting Party. Collateral Assignor hereby instructs Contracting Party, and Contracting Party accepts such instructions, to make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence. Collateral Assignor hereby consents to the foregoing and instructs Contracting Party to do so. Collateral Assignor hereby releases Contracting Party from all liability for making payments to the Collateral Agent in accordance with the requirements of this Section.

ACCOUNT:

☐ LLC - Disbursement Account Account Number:

Bank Name:

Bank Address:

ABA:

Credit:

8. Setoffs and Deductions. Each of Collateral Assignor and Collateral Agent agrees that Contracting Party shall have any rights of set off expressly available to it under the Assigned Agreement. The parties hereto acknowledge and agree that Section 8 above is solely an instruction as to where payment is to be sent and is not a separate payment obligation of the Contracting Party from the payment obligations set forth in the Assigned Agreement.

9. Representations and Warranties. Contracting Party hereby represents and warrants to Collateral Assignor and Collateral Agent, as of the date of this Consent that:

(a) Contracting Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation/incorporation, (ii) is duly qualified, authorized to do business and in good standing under the laws of the jurisdiction of its formation/incorporation and in every other jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to conduct its business as now conducted, to own its properties and assets, and to execute, deliver and perform its obligations under the Assigned Agreement and this Consent, and to carry out the terms thereof and hereof and the transactions contemplated thereby and hereby;

(b) The execution, delivery and performance by Contracting Party of the Assigned Agreement and this Consent, and the consummation of the transactions contemplated thereby and hereby, have been duly authorized by all necessary corporate or limited liability company action, as applicable, and do not and will not require any further authorizations, consents or approvals or filings with any Person which have not been obtained or made, or violate or conflict with any provision of any law, regulation, order, permit, license, rule, judgment, injunction, or similar matters or breach any material agreement, indenture, contract or organizational document

presently in effect with respect to or binding on Contracting Party or any properties to which Contracting Party may be bound;

(c) Contracting Party, to the best of Contracting Party's actual knowledge, is not in default under any document or instrument referred to in the preceding paragraph (b), or any of its obligations thereunder;

(d) All governmental approvals necessary for the execution, delivery and performance by Contracting Party of its obligations under the Assigned Agreement have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the applicable Project;

(e) Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate representatives of Contracting Party, constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally;

(f) The Assigned Agreement is in full force and effect and has not been amended, supplemented or modified, and there are no related change orders and like documents. The Assigned Agreement and this Consent are the only agreements between Contracting Party and Collateral Assignor;

(g) There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the actual knowledge of Contracting Party, threatened against or affecting Contracting Party that (i) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could have a materially adverse effect on the performance of the obligations hereof or of the Assigned Agreement or the condition (financial or otherwise), business, or operation of Contracting Party, or (iii) could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made;

(h) To Contracting Party's actual knowledge, (i) no event of force majeure exists under, and as defined in, the Assigned Agreement, (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable Contracting Party to terminate or suspend its obligations under the Assigned Agreement, (iii) there are no disputes or legal proceedings between Contracting Party and Collateral Assignor, and (iv) Collateral Assignor does not owe any indemnity payments or other amounts to Contracting Party under the Assigned Agreement, and no amounts are currently due and payable to Contracting Party under the Assigned Agreement which have not been paid;

(i) Notwithstanding anything to the contrary in the Assigned Agreement, after giving effect to the assignment by Collateral Assignor to Collateral Agent of the Assigned Collateral Interest as set forth herein and pursuant to the Security Agreement, and after giving effect to the

acknowledgment of and consent to such assignment by Contracting Party, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement. Contracting Party, to the actual knowledge of Contracting Party, has complied with all conditions precedent to the respective obligations of such parties to perform under the Assigned Agreement;

(j) Other than this Consent and the Security Agreement, the Contracting Party is not actually aware of any pledge, assignment or other transfer of any interest in the Assigned Agreement; and

(k) To Contracting Party's actual knowledge there are no facts entitling Contracting Party to any claim, counterclaim, offset or defense against Collateral Assignor in respect to the Assigned Agreement.

Each of the representations and warranties set forth in this Section 10 shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby for a period of three (3) years.

10. No Representation or Warranty Regarding Collateral Assignor's Interest in Assigned Agreement. Collateral Assignor and Collateral Agent each recognizes and acknowledges that Collateral Assignor makes no representation or warranty, express or implied, that Collateral Assignor has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Collateral Interest.

11. Notices. Any communications hereunder between or among the parties hereto, or any notices provided herein to be given, may be given to the following addresses:

If to Contracting Party: Clean Power Alliance of Southern California,
500 W. 5th Street, 35th Floor
Los Angeles, CA 90013
Attn: Executive Director
Phone: (213) 269-5870
Email: tbardacke@cleanpoweralliance.org

If to Collateral Agent: ☐

If to Collateral Assignor: ☐ LLC
c/o Solar Asset Management LLC
4900 Scottsdale Road, Suite 5000
Scottsdale, AZ 85251
Attn: VP Asset Management
Tel: (480) 424-1240
Email:
am@clearwayenergy.com

With copy to: ☐ LLC

c/o Solar Asset Management LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attn: General Counsel
Tel: (760) 710-2187
Email: legal@clearwayenergy.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by facsimile. Any notice or other communication so given shall be effective upon receipt by the addressee, except that any notice or other communication so transmitted by facsimile shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 5:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice or other communication is tendered to an addressee and the delivery thereof is refused by such addressee, such notice or other communication shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder by giving written notice of such change to the other parties in the manner set forth in this Section 12. As used herein, "Banking Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

12. Binding Effect; Amendments. This Consent shall be binding upon and shall inure to the benefit of Contracting Party, Collateral Assignor, Collateral Agent and the Secured Parties and their respective successors, transferees and permitted assigns (including, without limitation, any Person that refinances all or any portion of the Obligations under the Financing Agreement). Contracting Party also agrees to cause any successor-in-interest to Contracting Party with respect to its interest in the Assigned Agreement to assume, in writing in form and substance reasonably satisfactory to Collateral Agent and the Secured Parties, the obligations of Contracting Party hereunder. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, Collateral Agent and Collateral Assignor.

13. Governing Law. THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER 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.

14. Venue. NOTWITHSTANDING ANY RIGHT THAT THEY MAY OTHERWISE HAVE UNDER LAW TO VENUE IN OTHER COUNTIES OR LOCATION, THE PARTIES

CONSENT TO EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT OR CALIFORNIA STATE COURT SITTING IN THE CITY AND COUNTY OF LOS ANGELES, CALIFORNIA FOR THE LITIGATION OF DISPUTES OF ANY NATURE ARISING OUT OF OR RELATING TO THIS CONSENT INCLUDING, WITHOUT LIMITATION, DISPUTES SOUNDING IN CONTRACT, TORT OR BASED ON STATUTE OR REGULATION, THAT THE PARTIES ARE UNABLE TO SETTLE BETWEEN THEMSELVES. **CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY CONSENT 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 TO CONTRACTING PARTY AT ITS NOTICE ADDRESS PROVIDED PURSUANT TO SECTION 11 HEREOF. EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

15. Further Assurances. Contracting Party will, upon the reasonable written request of Collateral Agent, execute and deliver such further documents and do such other acts and things as may be necessary to effectuate the purposes of this Consent at Collateral Assignor's cost and expense.

16. Severability. If any provision of this Consent is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Consent shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision. The invalidity of a provision of this Consent in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17. Counterparts. This Consent may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Consent by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Consent.

18. Headings. The headings of the 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.

19. Interpretation. All references in this Consent to any document, instrument or agreement (a) shall include all contract variations, change orders, exhibits, schedules and other

attachments thereto, and (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, as amended, modified and supplemented from time to time and in effect at any given time. In the event of any conflict between the terms, conditions and provisions of this Consent and any agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

20. Collateral Agent's Rights. The Collateral Agent shall have the right to assign the Assigned Agreement to a Person to whom the applicable Project is transferred, subject to the limitations set forth in Section 3(a)(i)-(iii). Upon such assignment, the Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

21. Acknowledgements. The Contracting Party and Collateral Assignor acknowledge and agree with respect to the Assigned Agreement that:

- (i) The Collateral Agent and the Secured Parties are "Lenders" under the Assigned Agreement and shall have all rights of Lenders under the Assigned Agreement.
- (ii) For avoidance of doubt, the restriction set forth in Section 11.6 of the Assigned Agreement applies only to the [] MWac portion of Collateral Assignor's [] MWac Project comprised by the "Facility" (as defined in the Assigned Agreement) to which the Assigned Agreement relates and shall not restrict any sale to any third party from any portion of the other [] MWac portion of the Project.

[SIGNATURES FOLLOW]

EXHIBIT U

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 direct equipment suppliers are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT



This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [____], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Arica Solar, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

RECITALS





- A. The Parties entered into that certain Renewable Power Purchase Agreement, dated as of June 4, 2021 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. **Amendments to the Agreement.**
 - (a) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “12/1/2023” is deleted and replaced with “6/1/2024”.
 - (b) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “5/31/2023” is deleted and replaced with “9/1/2023”.
 - (c) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

| Milestone | Expected Date for Completion |
|---|---|
| Evidence of Site Control | Complete |
| Documentation of Conditional Use Permit if required: CEQA [X] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | Complete |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreement | Complete |
| Financial Close |  |
| Expected Construction Start Date |  |
| Initial Synchronization | 8/1/2023 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 6/20/2023 |
| Expected Date of CAISO Commercial Operation | 4/1/2024 |
| Expected Commercial Operation Date | 6/1/2024 |

- (d) The Delivery Term Expected Energy table on the Cover Sheet is replaced in its entirety with the following table:

| Contract Year | Expected Energy (MWh) |
|----------------------|---|
| 1 | 317,978 |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |

| | |
|----|--------|
| 6 | ██████ |
| 7 | ██████ |
| 8 | ██████ |
| 9 | ██████ |
| 10 | ██████ |
| 11 | ██████ |
| 12 | ██████ |
| 13 | ██████ |
| 14 | ██████ |
| 15 | ██████ |

- (e) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|--|
| 1 – 15 | \$██████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--|
| 1 – 15 | \$██████ /kW-mo. (flat) with no escalation |

- (f) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

Seller's Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the ITC at an “energy percentage” of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

- (g) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

“Charging Energy” means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Property Tax Exemption” means the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

“Renewable Rate” has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller’s Assumed Tax Credits, or (b) the ITC for the Generating Facility and that the ITC “energy percentage” claimed for the Generating Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%).

“Seller’s Assumed Tax Credits” has the meaning with respect to each of the ITC and PTC, as applicable, as set forth on the Cover Sheet.

“Storage Rate” has the meaning set forth on the Cover Sheet; *provided*, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that the ITC “energy percentage” claimed for the Storage Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Storage Rate shall be reduced by \$[REDACTED] per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$[REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$[REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the

Storage Rate shall increase from \$ [REDACTED] /kW-month by an amount equal by \$ [REDACTED] per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$ [REDACTED] /kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent increase greater than 25% plus the product of \$ [REDACTED] per kW-month and twenty-five (25).

(h) A new Section 2.2(k) is added as follows:

(k) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC "energy percentage" rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer's certificate.

(i) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(j) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(k) Section 4.4(b) is replaced in its entirety with the following:

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

- (l) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter.

- (m) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated on a daily basis.

- (n) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

- (o) New Sections 4.10(h) and (i) are added as follows:

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(i) Seller's obligations under Sections 3.10 and 4.10(h) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means

all Facility Energy, and the term “commercially reasonable efforts” as used in Section 3.10 and Section 4.10(h) means efforts consistent with and subject to Section 3.12.

- (p) In Section 10.4(a), the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)”.
- (q) In the final paragraph of Section 4 of Exhibit B, the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)” and the phrase “two hundred seventy (270)” is replaced by the phrase “two hundred ten (210)”.
- (r) In Section 3 of Exhibit H, the phrase “and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility” is added to the end thereof.
- (s) In Section II of Exhibit Q, Item 3 “Grid Charging” is replaced in its entirety by the phrase “[Intentionally Omitted]”.

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment are resolved by this Amendment. Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment that Seller is aware of and could make as of the Effective Date of this Amendment, and Buyer acknowledges and agrees that: (a) the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the terms of the Agreement due to circumstances arising after the Effective Date of this Amendment or of which Seller is not aware or cannot make a related claim as of the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment. Seller represents and warrants as of the Effective Date of this Amendment that, except as set out on Attachment 1, neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

“SELLER:”

ARICA SOLAR, LLC

By: _____

Printed Name:

Title:

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____

Printed Name:

Title:

ATTACHMENT 1

Development Cure Period Claims

Claims **for** [REDACTED] relating to the events described below:

- Delays resulting from module delivery delays impacted by (i) U.S. Customs and Border Protection's enforcement of [REDACTED] and (ii) [REDACTED] from the COVID-19 pandemic, as described in notices sent to Buyer on February 7, 2022, June 17, 2022, and September 27, 2022.
- Delays resulting from module delivery delays impacted by the [REDACTED] investigations by the U.S. Department of Commerce into whether solar cells and modules [REDACTED] are circumventing existing antidumping and countervailing tariffs [REDACTED], as described in notices sent from Seller to Buyer on May 16, 2022, and September 27, 2022.

EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Daggett Solar Power 2 LLC

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: A dedicated and separately metered 65 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated and separately metered 52 MW/208 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, as further described in Exhibit A and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Evidence of Site Control | Complete |
| Documentation of Conditional Use Permit if required: CEQA [X] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | Complete |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreement | Complete |
| Financial Close | |
| Expected Construction Start Date | |
| Initial Synchronization | 10/1/2022 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 8/1/2022 |
| Expected Date of CAISO Commercial Operation | 8/1/2023 |
| Expected Commercial Operation Date | 10/1/2023 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 202,432 |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Guaranteed Capacity: 117 MW of total Facility capacity

Guaranteed Storage Capacity: 52 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 65 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 1 | |

| | |
|----|------|
| 2 | ████ |
| 3 | ████ |
| 4 | ████ |
| 5 | ████ |
| 6 | ████ |
| 7 | ████ |
| 8 | ████ |
| 9 | ████ |
| 10 | ████ |
| 11 | ████ |
| 12 | ████ |
| 13 | ████ |
| 14 | ████ |
| 15 | ████ |

Guaranteed Construction Start Date: 3/31/2023

Guaranteed Commercial Operation Date: 10/1/2023

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|---|
| 1 – 15 | \$████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--------------|
|---------------|--------------|

| | |
|--------|--|
| 1 – 15 | \$[REDACTED]/kW-mo. (flat) with no escalation |
|--------|--|

Product

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
 - ☒ Full Capacity Deliverability Status: for the Facility

Anticipated Flexible Capacity: Amount: 52 MW

Scheduling Coordinator: Buyer

Security Amounts and Guarantor:

Development Security: \$60/kW of Guaranteed PV Capacity plus \$90/kW of Guaranteed Storage Capacity

Performance Security: \$60/kW of the lesser of Guaranteed PV Capacity and Installed PV Capacity plus \$90/kW of the lesser of Guaranteed Storage Capacity and Installed Storage Capacity

Guarantor: N/A on Effective Date

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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 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is

capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Anticipated Flexible Capacity” means the amount and category of Flexible Capacity identified on the Cover Sheet which Seller anticipates as of the Effective Date that the Facility will be qualified by the CAISO to provide to Buyer.

“Approved Forecast Vendor” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the Available Effective Storage Capacity and Available Storage Capability.

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Effective Storage Capacity” has the meaning in Exhibit P.

“Available Generating Facility Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Available Storage Capability” has the meaning in Exhibit P.

“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.

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer

Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff, including in Appendix K - Part A for Certification for Regulation, Part B for Spinning Reserve and Part C for Non-Spinning Reserve, that are applicable to the Facility for the certification and testing for all Ancillary Services, PMAX, and PMIN.

“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 Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV 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 or otherwise ceases to retain the ability to control the decision making of Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” 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).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

[REDACTED]

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of

doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating

Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero (0), Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.10(e).

"Delay Damages" means Daily Delay Damages and Commercial Operation Delay Damages.

"Delivery Point" has the meaning set forth in Exhibit A.

"Delivery Term" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Development Cure Period" has the meaning set forth in Exhibit B.

"Development Security" means (a) cash or (b) a Letter of Credit, in the amount set forth on the Cover Sheet.

"Discharging Energy" means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; provided, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice, and any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective Flexible Capacity” or **“EFC”** means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

“Effective Storage Capacity” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate calculated pursuant to Exhibit O by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or the Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts shall not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof.

“Energy In” means AC energy charged (in MWh) to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses).

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” means that total AC energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses).

“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 Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted (i) proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable, and (ii) in accordance with Section 2.7.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Generating Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted for Station Use or by the CAISO for any applicable Electrical Losses.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“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.

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“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.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.5.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.6.

“Guarantor” means, with respect to Seller, any Person that is listed on the Cover Sheet or that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit S, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging 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 sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; provided, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 65 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party,

including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“NERC” means the North American Electric Reliability Corporation or any successor entity.

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. 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, or (iii) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, or has retained Clearway Renewable Operation & Maintenance LLC or a different third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.



“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date; 


“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer was less than the Qualifying Capacity of the Facility for such month.

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the

American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, 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; *provided*, Replacement RA may be Resource Adequacy Benefits with an NP26 designation unless Buyer has demonstrably reached Buyer’s limit for such resources in such month.

“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 Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, 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.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the

CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SOC**” or “**State of Charge**” means (a) the level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Storage Capability**” has the meaning in Exhibit P.

“**Storage Capacity Availability Payment True-Up**” has the meaning set forth in Exhibit C.

“**Storage Capacity Availability Payment True-Up Amount**” has the meaning set forth in Exhibit C.

“**Storage Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**Storage Capacity Test**” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage Cure Plan**” has the meaning set forth in Section 11.1(b)(iv).

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“Supply Chain Code” has the meaning in Exhibit U.

“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 or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) 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 (ii) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means Clearway Renew LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the 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;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(i) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code, for example by implementing due diligence procedures for its and its Affiliate's suppliers, subcontractors and other participants in its supply chains. Seller shall notify Buyer promptly after it becomes aware of any breach, or imminent breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)- day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the

delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Guaranteed PV Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer, increase the Guaranteed PV Capacity upward by up to one and a half (1.5) MW AC. Upon such Notice, each reference to the Guaranteed PV Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.6 **Guaranteed Storage Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer, increase the Guaranteed Storage Capacity upward by up to one and a half (1.5) MW AC. Upon the issuance of such Notice, each reference to Guaranteed Storage Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.7 **Expected Energy Adjustment.** If Seller adjusts the Guaranteed PV Capacity pursuant to Section 2.5, then the Expected Energy shall be adjusted pro rata in proportion to such increase to the Guaranteed PV Capacity without the need for written amendment by the Parties.

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 and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy

generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of

the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products of the Generating Facility on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at seventy five (75) days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer; provided such failure is not the result of an act or omission of Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if Seller has not obtained certification from the CAISO of the Facility’s Qualifying Capacity, 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 plus any Replacement RA that was included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer's action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**").

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Generating Facility qualifies and is certified by the CEC (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) 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 Generating 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 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying, providing 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 (x) 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 [REDACTED]

[REDACTED]

(“**Compliance Expenditure Cap**”).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy to commence during the sixth (6th) Contract Year; *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 (except for PV Energy used as Charging Energy), and

Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Except as otherwise provided herein, Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging 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 PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including 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 Forecasting. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer

and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) Available Effective Storage Capacity, and (iv) Available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided* that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy. The Parties acknowledge and agree that, subject to Section 3.13, Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility; however, for purposes of CAISO financial settlements, the Parties understand that the CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. During the Delivery Term, Buyer will have the right to direct Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the

Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay Buyer the Renewable Rate for all Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Buyer's SC or the CAISO to provide Discharging Notices to Seller, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, or as is expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then such shall be a failure to perform a material covenant under Section 11.1(a)(iii).

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging

Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and Buyer shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller either [REDACTED] percent ([REDACTED]%) of the Storage Rate multiplied by the Effective Storage Capacity, pro-rated on a daily basis, [REDACTED]

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("**Alternative Dispatches**").

4.6 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance.

(i) Unless otherwise agreed to in writing by Buyer in its sole discretion, 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); *provided* 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. 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. Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes. Notwithstanding anything in this Agreement to the contrary, Seller shall not be required to provide Notice to Buyer of maintenance of the Generating Facility occurring during nighttime hours not otherwise impacting the Storage Facility.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event prevents Seller from delivering Product.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's

obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). “**Guaranteed Energy Production**” means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV 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) PV 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* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed the lower of (x) twenty percent (20%) of the Expected Energy for the previous Contract Year or (y) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

4.8 **Storage Facility Availability; Guaranteed Efficiency Rate; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] percent ([REDACTED]%) (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment pursuant to Section (d) of Exhibit C.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity. For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but

the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then as the exclusive remedy the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity or efficiency rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the

Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer at the Renewable Rate for all Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), *provided* that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy 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 PV Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

4.11 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including

a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use 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.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with ownership of the Facility and to any and all Tax Credits or other tax benefits associated with ownership of the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return that this Agreement is anything other than a "service contract" within the meaning of Section 7701(e) of the Code or in any other filings suggesting that this Agreement is anything other than a purchase of the Product from the Seller.

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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs, and (iv) provide that any reduction in Shared Facility capacity (excluding, for avoidance of doubt, any reduction attributable to a Curtailment Order) shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction.

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter all Station Use (other than Station Use associated with transformers and power converters which are supplied from the AC terminals, for which Seller shall provide Buyer with good faith estimates as to the quantities of such Station Use consumed by the Facility upon Buyer's reasonable request). All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data

and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA, and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data

from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent

overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G, and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect; *provided*, Seller shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form; *provided, however*, that a Guaranty may not be provided as 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. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit S. 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) the later of (i) 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), or (ii) one hundred eighty (180) days after such Delivery Term expiration or termination; *provided*, if Buyer does not provide written notice to Seller of any such payment obligations within one hundred eighty (180) days after such Delivery Term expiration or termination, clause (ii) above shall govern the termination of Seller's Performance Security obligation. Following the occurrence of both (a) and (b) above, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form; *provided, however*, that a Guaranty shall be considered on a case-by-case basis

only for Performance Security, not Development Security, and Buyer's acceptance of a Guaranty shall be subject, in Buyer's sole discretion, to Guarantor meeting Buyer's credit requirements.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, including COVID-19; 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 except to the extent such event is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take

reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties' performance hereunder may not be immediately or readily ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 and Section 10.1 once any impacts of COVID-19 that constitute a Force Majeure Event result in any delay or nonperformance hereunder.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period 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 Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party; *provided*, Seller shall be entitled to six (6) additional months to remedy the Force Majeure Event if Seller has been unable to remedy the Force Majeure Event within the original twelve (12)-month period despite exercising diligent efforts and Seller provides Notice to Buyer at least sixty (60) days prior to the expiration of the original twelve (12) month period that contains (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, and (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably be restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section

10.4(b)(i). Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

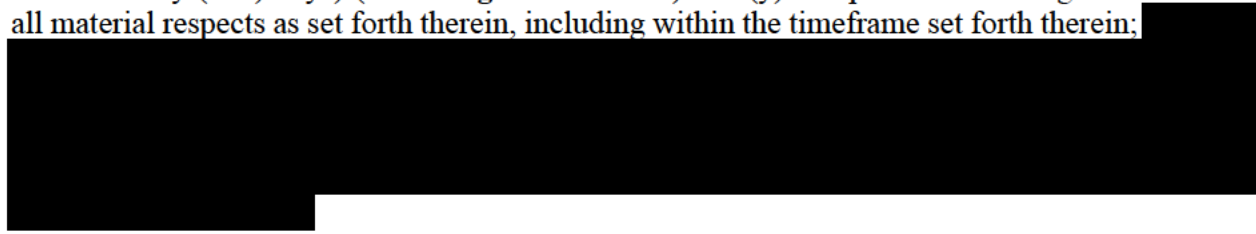
(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve 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) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity for the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (other than to the extent additional time is needed to mobilize construction at the Site, receive any necessary permits to implement such Storage Cure Plan, or remedy any serial defects of the Storage Facility, in which case, such one hundred eighty (180) day cure period may be extended to a maximum of three hundred sixty (360) days) (a "**Storage Cure Plan**") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;



(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure

to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) (Seller's Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, less 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, allocable to the Facility (including in connection with acquisition, development, financing and construction thereof, but excluding any costs and expenses associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility)) 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 a 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 Facility-related assets (which exclude, for clarity, any assets associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility) if sold individually, or (b) the Facility, whichever is greater, regardless of whether or not any Seller asset or the Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's Facility-related assets or the Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be

difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's

Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. 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 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Neither Seller nor its Affiliates have received notice from or, to Seller's knowledge after due inquiry, been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Project or the delivery of materials necessary to complete the Project, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 Buyer's Representations and Warranties. As of the Effective Date, and in the case of Section 13.2(h) as of each date on which Buyer delivers financial statements to Seller pursuant to Section 8.10(a)(i)(B) (or, if Buyer's means of satisfying Section 8.10(a)(i) is through the public posting of financial statements, then as of the date Buyer publicly posts such financial statements), Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their

positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.



13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, 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(s) to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit T ("**Consent to Collateral Assignment**") and reasonably requested estoppel certificates.

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 or cash 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 thirty (30) days' notice by delivering a Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit L ("**Assignment Agreement**"), *provided* that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5 and Buyer and Seller's ability to make the representations and warranties contained therein.

[REDACTED]

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used 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* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 **Insurance**.

(a) **General Liability**. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal & advertising injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars (\$5,000,000), which provides contractual liability in said amount, specifically covering Seller's liabilities arising under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. For clarity, limits of liability under this Section 17.1(a) may be met with umbrella/excess liability policies.

(b) **Employer's Liability Insurance**. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each

accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor Insurance. Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility and each other contractor Seller directly contracts with in connection with the Facility to carry (i) commercial general liability insurance with liability limits not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits no less than one million dollars (\$1,000,000) per occurrence. The contractors shall name Seller as an additional insured (except for workers' compensation) to insurance carried pursuant to clauses (f)(i) and (f)(iii). The contractors 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 thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least ten (10) 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, then, without restricting Buyer's remedies under Article 11, applicable Law or otherwise, Seller shall (in accordance with the applicable provisions of Section 16.2) indemnify and defend Buyer against all claims and liabilities for which, and to the same extent that, Buyer would have been covered by Seller's insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or

attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights

and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

DAGGETT SOLAR POWER 2 LLC

By: _____
Name: _____
Title: _____

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA, a California joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Daggett Solar Project

Site includes all or some of the following APNs:

| | |
|-------------|-------------|
| 0515-011-03 | |
| 0515-011-14 | |
| 0515-011-15 | |
| 0515-021-06 | |
| 0515-021-07 | |
| 0515-051-24 | 0515-111-06 |
| 0515-051-25 | 0515-111-07 |
| 0515-051-31 | 0515-111-08 |
| 0515-051-36 | 0515-111-09 |
| 0515-051-38 | 0515-131-11 |
| 0515-041-21 | 0515-131-12 |
| 0515-041-22 | 0515-131-13 |
| 0515-041-28 | 0515-131-36 |
| 0515-041-29 | 0515-111-10 |
| 0515-051-03 | 0515-061-19 |
| 0515-051-19 | 0515-071-02 |
| 0515-051-04 | 0515-041-15 |
| 0515-051-07 | 0515-041-25 |
| 0515-051-09 | 0515-111-12 |
| 0515-051-14 | 0515-111-13 |
| 0515-051-15 | 0515-111-14 |
| 0515-051-16 | 0515-111-15 |
| 0515-151-09 | 0515-111-16 |
| 0515-051-17 | 0515-151-04 |
| 0515-051-22 | 0515-151-30 |
| 0515-051-23 | 0515-151-29 |
| 0515-061-02 | |
| 0515-041-18 | |
| 0515-041-09 | |
| 0515-111-05 | |

City: unincorporated San Bernardino County

County: San Bernardino County

Zip Code: 92327

Latitude and Longitude: 34.857883, -116.816181

Facility Description: A dedicated and separately metered 65 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated and separately metered 52 MW/208 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, as depicted on the following Site Diagram, and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.



Delivery Point: Southern California Edison's Kramer substation

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder, to reflect the PNode then closest to the Facility.

Transmission Provider: Southern California Edison

Additional Information: n n/a

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 commencement of 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 notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date and, effective upon such notice, the Guaranteed Construction Start Date shall be automatically extended for the number of days included in such notice. Seller may extend the Guaranteed Construction Start Date more than once by the payment of Daily Delay Damages, provided the total duration of such delays shall not exceed one hundred twenty (120) days. If Seller achieves Construction Start on or before the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. Seller may extend the Guaranteed Commercial Operation Date more than once by the payment of Commercial Operation Delay Damages, provided the total duration of such delays shall not exceed ninety (90) days. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b). If a Development Cure Period overlaps any days for which Seller has paid Commercial Operation Delay Damages to extend the Guaranteed Commercial Operation Date, Buyer shall refund to Seller the Commercial Operation Delay Damages for each such day, 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 such circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or

- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor;

Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

"Efficiency Rate Factor" means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 100%

- (B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

$$\text{Efficiency Rate Factor} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

- (C) If the Efficiency Rate is less than 75%, then:

$$\text{Efficiency Rate Factor} = 0$$

(ii) **Storage Capacity Availability Payment True-Up**. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the **“Storage Capacity Availability Payment True-Up”**), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

$$\text{Capacity Availability Factor} = 0$$

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective

Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, or if the sum of (a) YTD Annual Storage Capacity Availability and (b) Force Majeure Unavailability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{YTD Annual Storage Capacity Availability}}$$

- (C) If the sum of (a) YTD Annual Storage Capacity Availability and (b) Force Majeure Unavailability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = ((\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 2.0) - (\text{Force Majeure Unavailability})$$

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

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 PV ENERGY

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-4

MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes, provided that such value shall not be less than \$10/MWh nor greater than \$50/MWh

D = the Renewable Rate, in \$/MWh

E = The 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: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes, in an amount not to exceed the lower of (i) twenty percent (20%) of the Expected Energy for the previous Contract Year or (ii) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

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* that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is ____ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of ____ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is ____ MW AC and shall be the “**Installed Capacity**”; and

(d) Such Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "**Effective Storage Capacity**"); and

(b) Such Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A 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. [XXXXXXXX]

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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, electronic messaging (e-mail), or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with

this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among [PPA Seller], a [] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”) [NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller 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 (as defined in the PPA) 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 Section 11.1(a)(iv) occurs with respect to Financing Party; or
 - (4) delivery of a written notice by Financing Party if any of the events described in Section 11.1(a)(iv) occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 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 19.2, 19.4, 19.5, and 19.7 of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:
Name:
Title:

By:
Name:
Title:

FINANCING PARTY

By:
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [____], 2021 by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [____] and extending until [____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA¹

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 Term 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 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line") | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|---|---|
| <i>ARICA SOLAR, LLC, a Delaware limited liability company</i> (“Seller”) | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”) |
| All Notices: Street: 4900 Scottsdale Road, Suite 5000 c/o Solar Asset Management LLC City: Scottsdale, AZ 85251 Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com With a copy to: Street: 5790 Fleet Street, Suite 200 City: Carlsbad, CA 92008 Attn: General Counsel Phone: 760-710-2187 E-mail: legal@clearwayenergy.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 E-mail: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: N/A Federal Tax ID Number: [81-3659562] | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Scheduling: TBD Attn: Phone: E-mail: |
| Confirmations: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: nkeefe@cleanpoweralliance.org |
| Payments: Attn: VP Asset Management Phone: 480-424-1240 E-mail: am@clearwayenergy.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: ABA: ACCT: | Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: XXXXXX8042 |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured (or calculated) and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

- (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy and Energy Out to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Energy Out (as reported under Section II.D(7) above) divided by the total amount of Energy In (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

The initial Supplementary Capacity Test Protocol outlined below shall be binding on the Parties until Section II.H modifies this Part III.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the Energy In.
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for the purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.

- (11) Record and store the Energy Out from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.
- (1) The resulting Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(11) above) divided by the total amount of Energy In (as reported under Section III.A(5) above), and expressed as a percentage, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow 26 MVAR for ten (10) minutes.
 - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow -26 MVAR for ten (10) minutes.

- (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

where:

“**A**” is the “Available Effective Storage Capacity” (as defined below), which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor (as measured as of the most recent Storage Capacity Test)) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor (as measured as of the most recent Storage Capacity Test)). In calculating Storage Capability, the “available battery charging capability” and “available

battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines) but Storage Capacity shall never exceed the Effective Storage Capacity x four (4) hours. The charging and discharging capability (in MWh) in a Calculation Interval shall be measured according to Section (b) of this Exhibit P.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “Available Effective Storage Capacity,” and “Available Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, including compliance with the Operating Restrictions as set forth herein, the calculations of Available Effective Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity taking into account Electrical Losses to the Delivery Point is less than 52 MW charging and 52 MW discharging at ■■■°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate based on manufacturer’s specifications to the applicable Calculation Interval.

(d) After 365 Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| | | | |
|--|--|------------------------------|--|
| File Update Date: | [XX/XX/20XX] | | |
| Technology: | Lithium-ion | | |
| Storage Unit Name: | [Unit Name and Number] | | |
| A. Contract Capacity | | | |
| Guaranteed Storage Capacity (MW): | 52 | | |
| Effective Storage Capacity (MW): | 52 | | |
| B. Total Unit Dispatchable Range Information | | | |
| Interconnect Voltage (kV) | 230 | | |
| Maximum Storage Level (MWh): | 208 | | |
| Minimum Storage Level (MWh): | 0 | | |
| Stored energy capability (MWh): | 208 | | |
| Maximum Discharge (MW): | 52 | | |
| Maximum Charge (MW): | 52 | | |
| Guaranteed Efficiency Rate: | See Guaranteed Efficiency Rate | | |
| Maximum energy throughput (BET) (MWh/year): | [REDACTED] | | |
| C. Charge and Discharge Rates | | | |
| Mode | Maximum (MW) | Ramp Rate (MW/s) Description | |
| Energy (Charge) | 52 | [REDACTED] | |
| Energy (Discharge) | 52 | [REDACTED] | |
| D. Ancillary Services | | | |
| Frequency regulation is included: | Yes, subject to Operating Restrictions | | |
| Spin is included: | Yes | | |

II. ADDITIONAL OPERATING RESTRICTIONS

1. **Annual Cycles:** Maximum of [REDACTED] Cycles per Contract Year.
2. **Daily Dispatch Limits:** [REDACTED] Cycles per day.
3. **Grid Charging:** The Storage Facility shall not use grid energy to provide Charging Energy,

subject to Section 3.13.

4. **Scheduling Controls:** All manual dispatch commands must use the Seller-supplied EMS.
5. **Resting State of Charge:** The average resting state of charge per Contract Year must be below ■■■ percent (■■■%).
6. **Interconnection Capacity Limit:** Dispatch cannot cause Facility Energy to exceed the Interconnection Capacity Limit.

EXHIBIT R
METERING DIAGRAM

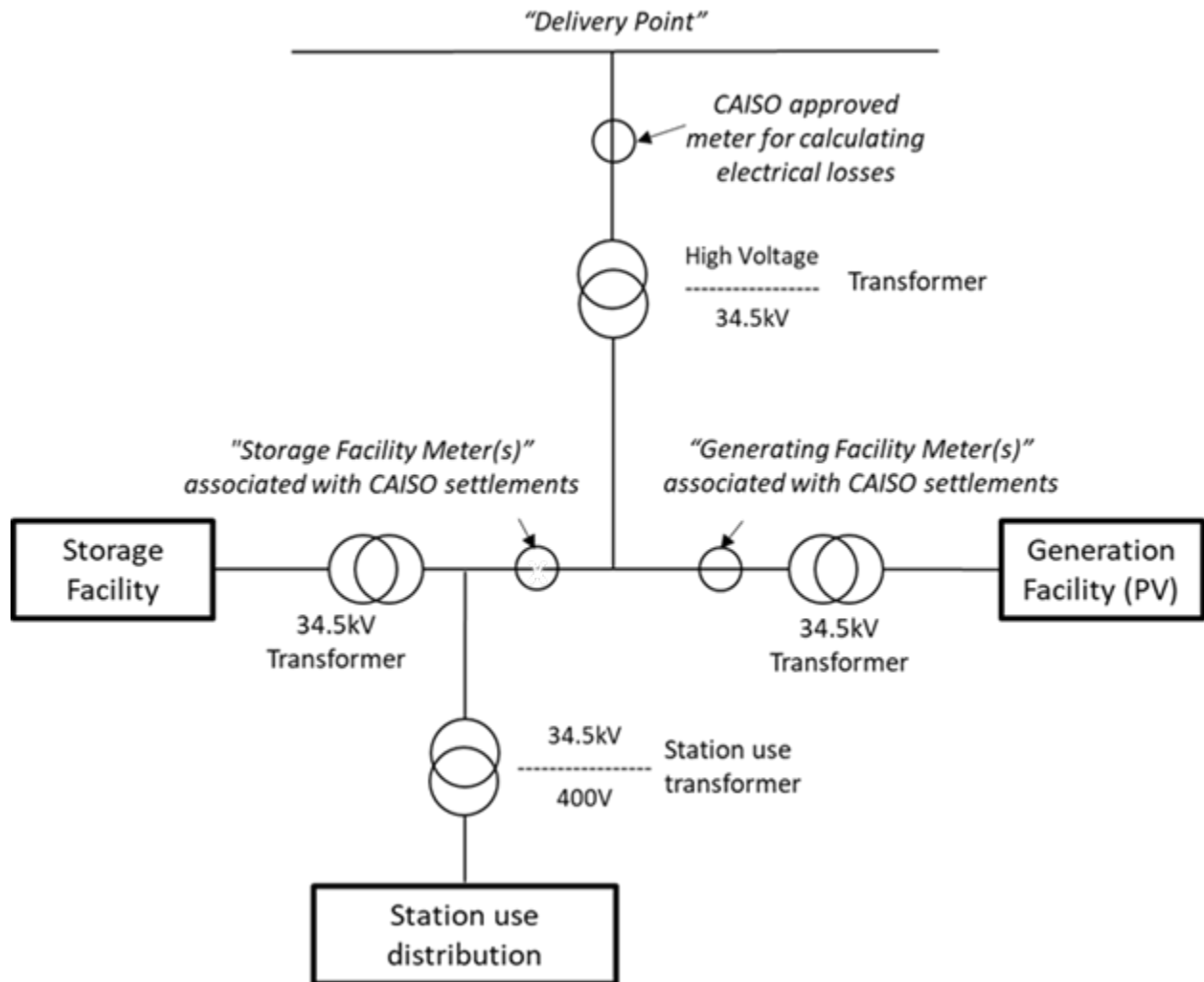


EXHIBIT S

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [_____] a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified, the “**PPA**”) dated as of [_____] 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms, unless Buyer has provided Notice to Seller pursuant to Section 8.8 of the Agreement that the Guaranteed Amounts have not been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent that insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it

has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument

executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT

TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Consent”), dated as of [], is executed by **CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**, a California joint powers authority (together with its successors, designees and assigns, “Contracting Party”), [], a Delaware limited liability company (together with its successors, designees and assigns, “Collateral Assignor”), and [], in its capacity as the collateral agent (together with its successors, designees and assigns in such capacity, “Collateral Agent”) for the Secured Parties (as defined in the Financing Agreement described below). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms, directly or by reference, in Exhibit A to the Financing Agreement.

RECITALS

A. [], a Delaware limited liability company (“Class B Member”), and [], a Delaware limited liability company (“Seller”, and jointly and severally with Class B Member, the “Borrower”) has entered into that certain Financing Agreement, dated as of [] (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), with the financial institutions from time to time party thereto as lenders (the “Lenders”), [], as Collateral Agent for the Secured Parties and as Administrative Agent, the Issuing Banks (each as defined therein), and any other agents and Persons party thereto, pursuant to which, among other things, the Secured Parties have agreed to extend financing to Borrower with respect to the construction, ownership, operation and maintenance of the Project (defined below).

B. Borrower’s subsidiaries are operating, and constructing and will operate, a solar photovoltaic power plant for the generation of electrical energy and storage and all related ancillary systems, located or to be located in California, and as further described in the Financing Agreement as the “Project” (the “Project”).

C. Collateral Assignor has entered into that certain Power Purchase and Sale Agreement, dated as of [] (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, the “Assigned Agreement”) with Contracting Party.

D. As a condition to the extension of credit under the Financing Agreement, Collateral Assignor has entered into that certain Guaranty and Security Agreement, dated as of [] with Collateral Agent (as amended and in effect from time to time, the “Security Agreement”), pursuant to which Collateral Assignor has collaterally assigned and granted to Collateral Agent for the benefit of the Secured Parties a first-priority security interest in all of Collateral Assignor’s right, title and interest in, to and under the Assigned Agreement, including all of Collateral Assignor’s rights to receive payments under or with respect to the Assigned Agreement and all payments due and to become due to Collateral Assignor under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the

“Assigned Collateral Interest”), as collateral security for satisfaction of all Obligations (as defined in the Financing Agreement) under the Financing Agreement and the other related financing documents (the “Financing Documents”).

E. It is a requirement under the Financing Agreement and the other Financing Documents that Contracting Party and the other parties hereto shall have executed this Consent.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything to the contrary in the Assigned Agreement, as follows:

1. Consent and Agreement. Contracting Party:

(a) waives the Collateral Assignor’s requirement to provide prior written notice to the Contracting Party at least fifteen (15) business days prior to the assignment of the Assigned Collateral Interest pursuant to Section 14.3 of the Assigned Agreement, and acknowledges and consents in all respects to the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, pursuant to the Security Agreement and the terms hereof;

(b) acknowledges the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Agreement and the other Financing Documents, upon notice to Contracting Party that an Event of Default has occurred and is continuing under the Financing Agreement or any other Financing Documents, to cure any defaults of Collateral Assignor, make all demands, give all notices, take all actions, and exercise all rights of Collateral Assignor under the Assigned Agreement and agrees to accept any such exercise;

(c) agrees not to: (i) cancel, terminate, suspend performance or waive compliance under the Assigned Agreement, except as provided in the Assigned Agreement or by operation of law and, in any event, except as provided in Section 4 of this Consent; (ii) consent to or accept any cancellation, termination, suspension or waiver of the Assigned Agreement by Collateral Assignor without the prior written consent of Collateral Agent; or (iii) assign, transfer or otherwise dispose of (by operation of law or otherwise) any part of its right, title or interest in the Assigned Agreement, without the prior written consent of Collateral Agent (such consent not to be unreasonably withheld, conditioned or delayed);

(d) agrees not to amend, supplement or modify the Assigned Agreement in any material respect (excluding routine or immaterial change orders or amendments), unless Contracting Party provides the Collateral Agent with the proposed amendment, supplement, waiver, other modification or consent not less than fifteen (15) Banking Days prior to the proposed date of the execution thereof and the Collateral Agent consents in writing thereto (such consent not to be unreasonably withheld, conditioned or delayed); and

(e) agrees to promptly deliver to Collateral Agent duplicates or copies of all material notices of or with respect to actual or threatened litigation or arbitration, material default, suspension, material waiver or termination delivered by Contracting Party to Collateral Assignor under or pursuant to the Assigned Agreement.

2. Collateral Assignor's Acknowledgement. Collateral Assignor acknowledges and agrees that Contracting Party is authorized to perform its obligations under the Assigned Agreement in accordance with its terms upon notice by Collateral Agent, which notice shall be deemed to be in compliance with Collateral Agent's rights under the Security Agreement and this Consent without any obligation for investigation on the part of Contracting Party, and that Contracting Party shall bear no liability to Collateral Assignor in connection therewith.

3. Subsequent Transferee.

If Collateral Agent gives prior written notice to Contracting Party that an Event of Default under the Financing Agreement or any other Financing Document has occurred and is continuing and Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement and the Security Agreement with respect to the foreclosure (whether judicial or nonjudicial) or sale of the Assigned Collateral Interest (or any portion thereof), Collateral Agent acknowledges and agrees it shall not assume, sell or otherwise dispose of the Assigned Collateral Interest (or any portion thereof) or any of Collateral Agent's rights under or to the Assigned Collateral Interest (or any portion thereof, and whether by foreclosure sale or other liquidation sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Collateral Agent or any third party, as the case maybe, assuming, purchasing or otherwise acquiring the Assigned Agreement (or any portion thereof) (i) cures any and all defaults of Collateral Assignor under the Assigned Agreement (excluding any Personal Defaults (as defined below) that shall be deemed cured upon such foreclosure or assumption); (ii) pays Contracting Party any and all sums due and payable by Collateral Assignor to Contracting Party prior to any such assumption, sale or disposition, including but not limited to any and all damages owed by Collateral Assignor to Contracting Party; (iii) executes and delivers to Contracting Party a written assumption in which such proposed transferee (aa) expressly assumes all of Collateral Assignor's rights and obligations under the Assigned Agreement, (bb) expressly agrees to be bound by the terms of the Assigned Agreement to the same extent the Collateral Assignor is thereunder, and (cc) agrees it is subject to Contracting Party's rights and defenses under the Assigned Agreement and applicable law; and (iv) is a Permitted Transferee (collectively, a "Subsequent Transferee"). A "Permitted Transferee" means (i) the Collateral Agent; (ii) a proposed transferee (or its ultimate parent) who has a tangible net worth that is equal to or in excess of \$150,000,000, or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's, and has at least two (2) years of experience owning or operating power generating facilities of a size equal to or in excess of 100 MW ac or has hired a manager or operator with such qualifications to operate the Project; or (iii) any other person approved by the Contracting Party. As used herein, Personal Defaults mean defaults that are personal to the Collateral Assignor and not curable by the Collateral Agent, such as the bankruptcy or insolvency of the Collateral Assignor.

(a) Collateral Agent further acknowledges that the collateral assignment of the Assigned Collateral Interest is for security purposes and is subject to any defenses or causes of action Contracting Party may have against Collateral Assignor and that Collateral Agent does not have the right under the Assigned Agreement to enforce the provisions of the Assigned Agreement unless and until an event of default has occurred and is continuing under the Financing Agreement or other Financing Documents and to the extent that Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement (each, a “Financing Default”), in which case Contracting Party shall (i) recognize the Subsequent Transferee as its counterparty under the Assigned Agreement and (ii) continue to perform its obligations under the Assigned Agreement in favor of the Subsequent Transferee; provided, however, that Collateral Assignor’s obligations under the Assigned Agreement shall continue in their entirety in full force and effect, and Contracting Party shall remain fully liable for all of its obligations under or relating to the Assigned Agreement. A Subsequent Transferee shall have the right to assign all of its interest in the Assigned Agreement to any person, subject to the limitations set forth in Section 3(a)(i)-(iii).

(b) Contracting Party acknowledges and agrees that, notwithstanding anything to the contrary in the Assigned Agreement, none of (i) the assignment of the Assigned Agreement pursuant to the Security Agreement, (ii) the foreclosure or any other enforcement action (any such action an “Enforcement Action”) undertaken by Collateral Agent in respect of its rights under the Security Agreement or any other related pledge agreement or mortgage (including any foreclosure on the direct or indirect membership interests of the Collateral Assignor), (iii) the acquisition of the rights of Collateral Assignor under the Assigned Agreement as a consequence of any Enforcement Action by Collateral Agent or any successor, assignee, designee or purchaser (each of whom shall be subject to the requirements in Section 3 of this Consent) (or acceptance of an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action) or (iv) the assignment of the Assigned Agreement by Collateral Agent to a successor, assignee, designee or purchaser (each of whom shall be subject to the requirements in Section 3 of this Consent) following a purchase after an Enforcement Action or following an absolute assignment thereof in lieu of an Enforcement Action, in and of itself shall constitute a default by Collateral Assignor under the Assigned Agreement or shall result in termination thereof; provided, however, that nothing in this Section 3(c) shall preclude Contracting Party from declaring an event of default by the Collateral Assignor under the Assigned Agreement or a termination thereof for reasons other than those set forth in this Section 3(c).

Right to Cure. In the event of a default or breach by Collateral Assignor in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend performance under the Assigned Agreement (hereinafter, a “Default”), Contracting Party shall not cancel, suspend or terminate the Assigned Agreement or its performance thereunder until it first gives written notice of such Default to Collateral Agent and affords Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) (a) a period of twenty (20) days from the Collateral Agent Default Notice Date (defined below) to cure such Default if such Default is the failure to pay amounts to Contracting Party which are due and payable under

the Assigned Agreement or (b) with respect to any other Default, the same cure period applicable to the Default in the Assigned Agreement; provided, if Collateral Agent provides notice to Contracting Party within such applicable cure period that Collateral agent intends to cure such non-payment Default but reasonable anticipates that it will require additional time as set forth in a cure plan provided to Contracting Party in accordance with Section 14.2(b) of the Assigned Agreement, then Collateral Agent shall have a reasonable opportunity, but no more than ninety (90) days from the Collateral Agent Default Notice Date (defined below) to cure such nonpayment Default (provided that during such cure period Collateral Agent or Collateral Assignor continues to perform each of Collateral Assignor's other obligations under the Assigned Agreement capable of being cured). The "Collateral Agent Default Notice Date" shall mean the later to occur of (Y) receipt of such notice and (Z) the expiration of the cure periods available to the Collateral Assignor under the Assigned Agreement. Notwithstanding anything to the contrary herein, if and only if the Default is a Personal Default, then, notwithstanding any right that Contracting Party may have to terminate the Assigned Agreement, Collateral Agent shall be entitled to assume the rights and obligations of Collateral Assignor within the cure period described in Section 4(b) (as extended pursuant to the following sentences), and provided that such assumption has occurred within such period and Collateral Agent has commenced taking the actions contemplated by the next sentence which it hereby acknowledges and agrees are required to cure a Personal Default (or for such Personal Default to be deemed cured), Contracting Party shall not be entitled to terminate the Assigned Agreement as a result of such Default. Upon the occurrence of an event of Personal Default whereby possession of the Project is necessary to cure such Personal Default, and Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) declares an Event of Default under the Financing Agreement or any other Financing Document and commences foreclosure proceedings or any other proceedings necessary to take possession of such Project within thirty (30) calendar days of the Collateral Agent Default Notice Date, Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) will be allowed a reasonable period to complete such proceedings, but in no event more than one hundred twenty (120) days from Collateral Agent Default Notice Date provided that the Collateral Agent cures all monetary Defaults upon completion of such foreclosure proceedings, including but not limited to payment by Collateral Agent of any and all damages owed by Collateral Assignor to Contracting Party. After taking possession of such Project, Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) shall commence curing such breach or Default within twenty (20) days after having possession of such Project and thereafter diligently to pursue such cure to completion within the period that is one hundred twenty (120) days from the Collateral Agent Default Notice Date. If Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of Collateral Assignor from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, but in no event shall the period be extended beyond the date that is 180 days from the Collateral Agent Notice Default Date ("Tolled Cure Period"); provided, however, that if at any time during any applicable cure period, the Collateral Agent or its successor(s), assignee(s), or designee(s) has determined that it will no longer take any action to cure such breach or Default, the Collateral Agent shall promptly notify the Contracting Party in writing of such

determination and, following such notice, the Contracting Party shall have the right to suspend or terminate the Assigned Agreement or exercise its other remedies for such breach or Default, all in accordance with the terms of the Assigned Agreement. The Parties agree that notwithstanding anything to the contrary set forth herein, Contracting Party shall have the right to take any action permitted under the Assigned Agreement in respect of an event of default thereunder after the expiration of the cure periods set forth above or at any time during the Tolerated Cure Period for a Personal Default if the Collateral Agent or Collateral Assignor fails to perform each of Collateral Assignor's other obligations under the Assigned Agreement (subject to the applicable cure periods set forth in Section 4(a) or (b) for any such other Default) and, for the avoidance of doubt, the extended cure periods set forth above that apply to periods of time in addition to the period of up to 90 days from the Collateral Agent Default Notice Date, apply solely to Personal Defaults and not to any other default under the Assigned Agreement.

4. In the event that the Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding of the Collateral Assignor, to the extent permitted by applicable law, Contracting Party and Collateral Assignor shall enter into a new contract with the Collateral Agent or its transferee, assignee or designee. Such new contract shall be on the same terms and conditions as the original Assigned Agreement for the remaining term of the original Assigned Agreement before giving effect to such termination.

5. No Liability. Contracting Party acknowledges and agrees that neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) or other representative of Collateral Agent or the Secured Parties) shall have any liability or obligation under the Assigned Agreement as a result of exercising its rights under this Consent (other than as a Subsequent Transferee under Section 3 of this Consent), the Financing Agreement or any other Financing Document, and neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) (each of whom shall be subject to the requirements in Section 3 of this Consent) or other representative of Collateral Agent or the Secured Parties) shall be obligated or required to perform any of Collateral Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Financing Agreement or any other Financing Document, except during any period in which such Person has elected to become a Subsequent Transferee pursuant to Section 3 of this Consent, in which case such Subsequent Transferee shall assume all of Collateral Assignor's rights and obligations under the Assigned Agreement in accordance with Section 3 of this Consent, provided, that the obligations of such Subsequent Transferee shall be no more but no less than that of Collateral Assignor under the Assigned Agreement

6. Liability Agreement. Collateral Assignor agrees to pay, and to hold Contracting Party harmless from, any and all balance owed, loss, liability, damage, claim, cost or expense, including without limitation, any direct, indirect or consequential loss, liability, damage, claim, cost or expenses, including legal fees and expenses (collectively, "Losses") in connection with or arising out of this Consent, other than Losses arising out of or relating to a breach or repudiation of Section 1 or Section 10 hereof.

7. Payment of Monies. Commencing on the date of this Consent and until the earlier

to occur of the (i) Term Conversion Date and (ii) Discharge Date, Contracting Party agrees to make all payments (if any) required to be made by it under the Assigned Agreement in U.S. dollars and in immediately available funds directly to the account described immediately below, or, if Contracting Party has been notified in writing by Collateral Agent (with a copy to Collateral Assignor) that an Event of Default under the Financing Agreement has occurred and is continuing, to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to Contracting Party. Collateral Assignor hereby instructs Contracting Party, and Contracting Party accepts such instructions, to make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence. Collateral Assignor hereby consents to the foregoing and instructs Contracting Party to do so. Collateral Assignor hereby releases Contracting Party from all liability for making payments to the Collateral Agent in accordance with the requirements of this Section.

ACCOUNT:

☐ LLC - Disbursement Account Account Number:

Bank Name:

Bank Address:

ABA:

Credit:

8. Setoffs and Deductions. Each of Collateral Assignor and Collateral Agent agrees that Contracting Party shall have any rights of set off expressly available to it under the Assigned Agreement. The parties hereto acknowledge and agree that Section 8 above is solely an instruction as to where payment is to be sent and is not a separate payment obligation of the Contracting Party from the payment obligations set forth in the Assigned Agreement.

9. Representations and Warranties. Contracting Party hereby represents and warrants to Collateral Assignor and Collateral Agent, as of the date of this Consent that:

(a) Contracting Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation/incorporation, (ii) is duly qualified, authorized to do business and in good standing under the laws of the jurisdiction of its formation/incorporation and in every other jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to conduct its business as now conducted, to own its properties and assets, and to execute, deliver and perform its obligations under the Assigned Agreement and this Consent, and to carry out the terms thereof and hereof and the transactions contemplated thereby and hereby;

(b) The execution, delivery and performance by Contracting Party of the Assigned Agreement and this Consent, and the consummation of the transactions contemplated thereby and hereby, have been duly authorized by all necessary corporate or limited liability company action, as applicable, and do not and will not require any further authorizations, consents or approvals or filings with any Person which have not been obtained or made, or violate or conflict with any provision of any law, regulation, order, permit, license, rule, judgment, injunction, or similar matters or breach any material agreement, indenture, contract or organizational document

presently in effect with respect to or binding on Contracting Party or any properties to which Contracting Party may be bound;

(c) Contracting Party, to the best of Contracting Party's actual knowledge, is not in default under any document or instrument referred to in the preceding paragraph (b), or any of its obligations thereunder;

(d) All governmental approvals necessary for the execution, delivery and performance by Contracting Party of its obligations under the Assigned Agreement have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the applicable Project;

(e) Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate representatives of Contracting Party, constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally;

(f) The Assigned Agreement is in full force and effect and has not been amended, supplemented or modified, and there are no related change orders and like documents. The Assigned Agreement and this Consent are the only agreements between Contracting Party and Collateral Assignor;

(g) There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the actual knowledge of Contracting Party, threatened against or affecting Contracting Party that (i) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could have a materially adverse effect on the performance of the obligations hereof or of the Assigned Agreement or the condition (financial or otherwise), business, or operation of Contracting Party, or (iii) could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made;

(h) To Contracting Party's actual knowledge, (i) no event of force majeure exists under, and as defined in, the Assigned Agreement, (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable Contracting Party to terminate or suspend its obligations under the Assigned Agreement, (iii) there are no disputes or legal proceedings between Contracting Party and Collateral Assignor, and (iv) Collateral Assignor does not owe any indemnity payments or other amounts to Contracting Party under the Assigned Agreement, and no amounts are currently due and payable to Contracting Party under the Assigned Agreement which have not been paid;

(i) Notwithstanding anything to the contrary in the Assigned Agreement, after giving effect to the assignment by Collateral Assignor to Collateral Agent of the Assigned Collateral Interest as set forth herein and pursuant to the Security Agreement, and after giving effect to the

acknowledgment of and consent to such assignment by Contracting Party, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement. Contracting Party, to the actual knowledge of Contracting Party, has complied with all conditions precedent to the respective obligations of such parties to perform under the Assigned Agreement;

(j) Other than this Consent and the Security Agreement, the Contracting Party is not actually aware of any pledge, assignment or other transfer of any interest in the Assigned Agreement; and

(k) To Contracting Party's actual knowledge there are no facts entitling Contracting Party to any claim, counterclaim, offset or defense against Collateral Assignor in respect to the Assigned Agreement.

Each of the representations and warranties set forth in this Section 10 shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby for a period of three (3) years.

10. No Representation or Warranty Regarding Collateral Assignor's Interest in Assigned Agreement. Collateral Assignor and Collateral Agent each recognizes and acknowledges that Collateral Assignor makes no representation or warranty, express or implied, that Collateral Assignor has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Collateral Interest.

11. Notices. Any communications hereunder between or among the parties hereto, or any notices provided herein to be given, may be given to the following addresses:

If to Contracting Party: Clean Power Alliance of Southern California,
500 W. 5th Street, 35th Floor
Los Angeles, CA 90013
Attn: Executive Director
Phone: (213) 269-5870
Email: tbardacke@cleanpoweralliance.org

If to Collateral Agent: ☐

If to Collateral Assignor: ☐ LLC
c/o Solar Asset Management LLC
4900 Scottsdale Road, Suite 5000
Scottsdale, AZ 85251
Attn: VP Asset Management
Tel: (480) 424-1240
Email:
am@clearwayenergy.com

With copy to: ☐ LLC

c/o Solar Asset Management LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attn: General Counsel
Tel: (760) 710-2187
Email: legal@clearwayenergy.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by facsimile. Any notice or other communication so given shall be effective upon receipt by the addressee, except that any notice or other communication so transmitted by facsimile shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 5:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice or other communication is tendered to an addressee and the delivery thereof is refused by such addressee, such notice or other communication shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder by giving written notice of such change to the other parties in the manner set forth in this Section 12. As used herein, "Banking Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

12. Binding Effect; Amendments. This Consent shall be binding upon and shall inure to the benefit of Contracting Party, Collateral Assignor, Collateral Agent and the Secured Parties and their respective successors, transferees and permitted assigns (including, without limitation, any Person that refinances all or any portion of the Obligations under the Financing Agreement). Contracting Party also agrees to cause any successor-in-interest to Contracting Party with respect to its interest in the Assigned Agreement to assume, in writing in form and substance reasonably satisfactory to Collateral Agent and the Secured Parties, the obligations of Contracting Party hereunder. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, Collateral Agent and Collateral Assignor.

13. Governing Law. THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER 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.

14. Venue. NOTWITHSTANDING ANY RIGHT THAT THEY MAY OTHERWISE HAVE UNDER LAW TO VENUE IN OTHER COUNTIES OR LOCATION, THE PARTIES

CONSENT TO EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT OR CALIFORNIA STATE COURT SITTING IN THE CITY AND COUNTY OF LOS ANGELES, CALIFORNIA FOR THE LITIGATION OF DISPUTES OF ANY NATURE ARISING OUT OF OR RELATING TO THIS CONSENT INCLUDING, WITHOUT LIMITATION, DISPUTES SOUNDING IN CONTRACT, TORT OR BASED ON STATUTE OR REGULATION, THAT THE PARTIES ARE UNABLE TO SETTLE BETWEEN THEMSELVES. **CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY CONSENT 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 TO CONTRACTING PARTY AT ITS NOTICE ADDRESS PROVIDED PURSUANT TO SECTION 11 HEREOF. EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

15. Further Assurances. Contracting Party will, upon the reasonable written request of Collateral Agent, execute and deliver such further documents and do such other acts and things as may be necessary to effectuate the purposes of this Consent at Collateral Assignor's cost and expense.

16. Severability. If any provision of this Consent is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Consent shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision. The invalidity of a provision of this Consent in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17. Counterparts. This Consent may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Consent by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Consent.

18. Headings. The headings of the 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.

19. Interpretation. All references in this Consent to any document, instrument or agreement (a) shall include all contract variations, change orders, exhibits, schedules and other

attachments thereto, and (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, as amended, modified and supplemented from time to time and in effect at any given time. In the event of any conflict between the terms, conditions and provisions of this Consent and any agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

20. Collateral Agent's Rights. The Collateral Agent shall have the right to assign the Assigned Agreement to a Person to whom the applicable Project is transferred, subject to the limitations set forth in Section 3(a)(i)-(iii). Upon such assignment, the Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

21. Acknowledgements. The Contracting Party and Collateral Assignor acknowledge and agree with respect to the Assigned Agreement that:

- (i) The Collateral Agent and the Secured Parties are "Lenders" under the Assigned Agreement and shall have all rights of Lenders under the Assigned Agreement.
- (ii) For avoidance of doubt, the restriction set forth in Section 11.6 of the Assigned Agreement applies only to the [] MWac portion of Collateral Assignor's [] MWac Project comprised by the "Facility" (as defined in the Assigned Agreement) to which the Assigned Agreement relates and shall not restrict any sale to any third party from any portion of the other [] MWac portion of the Project.

[SIGNATURES FOLLOW]

EXHIBIT U

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 direct equipment suppliers are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [____], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Daggett Solar Power 2 LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

RECITALS

- A. The Parties entered into that certain Renewable Power Purchase Agreement, dated as of June 4, 2021 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed and Buyer has acknowledged significant delays to the Milestone schedule (the “**Development Cure Period Claims**”), including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly described in that certain Letter Agreement, dated as of July 11, 2022, by and between Buyer and Seller (the “**Letter Agreement**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. Amendments to the Agreement.
 - (a) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|--|
| 1 – 15 | \$ [REDACTED] /MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|---|
| 1 – 15 | \$[REDACTED]/kW-mo. (flat) with no escalation |

- (b) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

Seller's Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the ITC at an "energy percentage" of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

- (c) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

"Charging Energy" means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"Property Tax Exemption" means the "new construction" exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

"Renewable Rate" has the meaning set forth on the Cover Sheet; *provided*, if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller's Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller's Assumed Tax Credits, or (b) the ITC for the Generating Facility and that that the ITC "energy percentage" claimed for the Generating Facility is higher than the ITC "energy percentage" set forth in Seller's Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each one (1) percentage point that the "energy percentage" for the claimed ITC rate is above thirty percent (30%).

"Seller's Assumed Tax Credits" has the meaning set forth on the Cover Sheet.

"Storage Rate" has the meaning set forth on the Cover Sheet; provided, (a) if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that the ITC "energy percentage" claimed for the Storage Facility is higher than the ITC "energy percentage" set forth as Seller's Assumed Tax

Credits, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), and (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$ [REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$ [REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the Storage Rate shall increase from \$ [REDACTED]/kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$ [REDACTED]/kW-month by an amount equal to \$ [REDACTED] per kW-month for each one (1) percent increase greater than 25% plus the product of \$ [REDACTED] per kW-month and twenty-five (25).

(d) A new Section 2.2(k) is added as follows:

(k) Seller has delivered to Buyer an officer’s certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC “energy percentage” rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer’s certificate.

(e) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(f) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(g) Section 4.4(b) is replaced in its entirety with the following:

(i) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(h) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter.

(i) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated on a daily basis.

(j) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(k) New Sections 4.10(h) and (i) are added as follows:

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(i) Seller's obligations under Sections 3.10 and 4.10(h) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means all Facility Energy, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(h) means efforts consistent with and subject to Section 3.12.

- (l) In Section 3 of Exhibit H, the phrase "and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility" is added to the end thereof.
- (m) In Section II of Exhibit Q, Item 3 "Grid Charging" is replaced in its entirety by the phrase "[Intentionally Omitted]".

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment are resolved by this Amendment and the Letter Agreement. Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment that Seller is aware of and could make as of the Effective Date of this Amendment, and Buyer acknowledges and agrees that: (a) the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the terms of the Agreement due to circumstances arising after the Effective Date of this Amendment or of which Seller is not aware or cannot make a related claim as of the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment (less any Development Cure Period claimed by Seller and acknowledged by Buyer in the Letter Agreement). Seller represents and warrants as of the Effective Date of this Amendment that neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD. Pursuant to the Letter Agreement, Buyer acknowledges that Buyer has granted Seller a seventy-nine (79) day Development Cure Period such that the Guaranteed Commercial Operation Date is December 19, 2023.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments

contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

“SELLER:”

DAGGETT SOLAR POWER 2 LLC

By: _____

Printed Name:

Title:

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____

Printed Name:

Title:

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Daggett Solar Power 3 LLC, a Delaware limited liability company

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: A dedicated and separately metered 123 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated 61.5 MW/246 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, as further described in Exhibit A and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

Milestones:

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Evidence of Site Control | Complete |
| Documentation of Conditional Use Permit if required: [X] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [X] EIR | Complete |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreement | Complete |
| Financial Close | |
| Expected Construction Start Date | |
| Initial Synchronization | 10/1/2022 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 3/31/2023 |
| Expected Commercial Operation Date | 3/31/2023 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 383,063 |
| 2 | ██████ |
| 3 | ██████ |
| 4 | ██████ |
| 5 | ██████ |
| 6 | ██████ |
| 7 | ██████ |
| 8 | ██████ |
| 9 | ██████ |
| 10 | ██████ |
| 11 | ██████ |
| 12 | ██████ |
| 13 | ██████ |
| 14 | ██████ |
| 15 | ██████ |

Guaranteed Capacity: 184.5 MW of total Facility capacity

Guaranteed Storage Capacity: 61.5 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 123 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 1 | ██████ |
| 2 | ██████ |

| | |
|----|------|
| 3 | ████ |
| 4 | ████ |
| 5 | ████ |
| 6 | ████ |
| 7 | ████ |
| 8 | ████ |
| 9 | ████ |
| 10 | ████ |
| 11 | ████ |
| 12 | ████ |
| 13 | ████ |
| 14 | ████ |
| 15 | ████ |

Guaranteed Construction Start Date: 6/30/2022

Guaranteed Commercial Operation Date: 3/31/2023

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|---|
| 1 – 15 | \$████/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--|
| 1 – 15 | \$████/kW-mo. (flat) with no escalation |

Product

- ☒ PV Energy
 - ☒ Discharging Energy
 - ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
 - ☒ Installed Storage Capacity and Effective Storage Capacity
 - ☒ Ancillary Services
 - ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status
- a) RA Guarantee Date: Commercial Operation Date

Scheduling Coordinator: Buyer

Security and Guarantor:

Development Security: \$60/kW of Guaranteed PV Capacity plus \$90/kW of Guaranteed Storage Capacity

Performance Security: \$60/kW of the lesser of Guaranteed PV Capacity and Installed PV Capacity plus \$90/kW of the lesser of Guaranteed Storage Capacity and Installed Storage Capacity

Guarantor: N/A on Effective Date

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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 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is

capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Approved Forecast Vendor” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the Available Effective Storage Capacity and Available Storage Capability.

“Available Effective Storage Capacity” has the meaning in Exhibit P.

“Available Generating Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Available Storage Capability” has the meaning in Exhibit P.

“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.

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff, including in Appendix K - Part A for Certification for Regulation, Part B for Spinning Reserve and Part C for Non-Spinning Reserve, that are applicable to the Facility for the certification and testing for all Ancillary Services, PMAX, and PMIN.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV 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 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 or otherwise ceases to retain the ability to control the decision making of Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in

effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

“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).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet and is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(c).

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit, in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; provided, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a

Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Charging Energy into Discharging Energy, as calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or the Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Contract Term.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(10) of Exhibit O.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted (i) proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable, and (ii) in accordance with Section 2.7.

“Facility” means the combined Generating Facility and the Storage Facility. For the avoidance of doubt, as used in this Agreement, the Facility means the dedicated and separately metered 123 MW AC portion of the larger solar photovoltaic generating facility along with the dedicated 61.5 MW/246 MWh battery energy storage facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Generating Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Financial Close” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant

rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *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: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (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; (c) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power

attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (a) the Guaranteed PV Capacity and (b) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.5.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point)

for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.6.

“Guarantor” means, with respect to Seller, any Person that is listed on the Cover Sheet or that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Energy from the Facility to the Delivery Point.

“Installed Capacity” means the sum of (a) the Installed PV Capacity and (b) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; provided, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 123 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the Code.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of

the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(i) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s;

(ii) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Generating Facility, or has retained a third-party with such experience to operate the Generating Facility; and

(iii) At least [REDACTED] of experience in the ownership and operations of energy storage facilities similar to the Storage Facility, or has retained a third-party with such experience to operate the Storage 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 accordance with Section 4.6(a).

“PMAx” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the Code.

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover

Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Code); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource; *provided*, Replacement RA may be Resource Adequacy Benefits

with an NP26 designation unless Buyer has demonstrably reached Buyer's limit for such resources in such month.

"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 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"** and **"Scheduling"** have a corollary meaning.

"Scheduled Energy" means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, 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.

"Self-Schedule" has the meaning set forth in the CAISO Tariff.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller Initiated Test" has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or **“State of Charge”** means (a) the level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means the Energy 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.

“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means Clearway Renew LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed

PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the 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;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)- day period following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, 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 **Guaranteed PV Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days’ Notice to Buyer, increase the Guaranteed PV Capacity upward by up to one and a half (1.5) MW AC. Upon such Notice, each reference to the Guaranteed PV Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.6 **Guaranteed Storage Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days’ Notice to Buyer, increase the Guaranteed Storage Capacity upward by up to one and a half (1.5) MW AC. Upon the issuance of such Notice, each reference to Guaranteed Storage Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.7 **Expected Energy Adjustment.** If Seller adjusts the Guaranteed PV Capacity pursuant to Section 2.5, then the Expected Energy shall be adjusted pro rata in proportion to such increase to the Guaranteed PV Capacity without the need for written amendment by the Parties.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise

submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy and/or Discharging Energy delivered from the Generating Facility and received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set

forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products 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 an amount equal to seventy percent (70%) of the Renewable Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure**.

(a) **RA Deficiency Determination**. For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation**. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the 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* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying

Capacity of the Facility (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) with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month; *provided, further*, that (i) the amount of Replacement RA shall not to exceed [REDACTED] percent ([REDACTED]) of the Qualifying Capacity of the Facility for any such RA Shortfall Month, [REDACTED] (iii) any Replacement RA is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (a) the Generating Facility qualifies and is certified by the CEC (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) as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (b) the Generating 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 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying, providing 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 (x) 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 and (y) in any Contract Year to comply with such obligations shall be capped at seven thousand five hundred dollars (\$7,500) per MW of Guaranteed Capacity; [REDACTED]

[REDACTED] (“**Compliance Expenditure Cap**”).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; *provided*, 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. Except as otherwise provided herein, Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging 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 PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) Available Effective Storage Capacity, and (iv) Available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each

day of the following month in a form substantially similar to Exhibits F-2, F-3 and F-4, as applicable (“**Monthly Forecast**”).

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“**Real-Time Forecast**”), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided* that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which assumes no Charging Energy or

Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided* that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for

failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) **Charging Notices.** During the Delivery Term, Buyer will have the right to direct Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then Seller shall pay Buyer the Renewable Rate for all Energy associated with such charging of the Storage Facility and Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Buyer's SC or the CAISO to provide Discharging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, or as is expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then such shall be a failure to perform a material covenant under Section 11.1(a)(iii).

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation. To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or

Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) Station Use. Notwithstanding anything to the contrary in this Section 4.5 or this Agreement, the Parties acknowledge that Seller is responsible for providing all Energy to serve Station Use, that Station Use may be supplied from the grid or the Facility, and that the supply of Station Use shall not be deemed a deviation for purposes of Section 4.5(g) or a violation of this Agreement, including Sections 4.5(c), (d), and (f); *provided* that Seller shall be responsible for the cost of any Energy to serve such Station Use.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("**Alternative Dispatches**").

4.6 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance.

(i) Unless otherwise agreed to in writing by Buyer in its sole discretion, 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) Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes; *provided*, Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes. Notwithstanding anything in this Agreement

to the contrary, Seller shall not be required to provide Notice to Buyer of maintenance of the Generating Facility occurring during nighttime hours not otherwise impacting the Storage Facility.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 Guaranteed Energy Production. During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV 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) PV 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; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement

Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed the lower of (x) twenty percent (20%) of the Expected Energy for the previous Contract Year or (y) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

4.8 **Storage Facility Availability; Guaranteed Efficiency Rate; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] percent ([REDACTED]%) (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(c) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment pursuant to Section (d) of Exhibit C.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity. For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then as the exclusive remedy the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

(e) Upon Buyer’s reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, *provided* that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability pursuant to Exhibit P. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer’s payment of the Renewable Rate to Seller for all PV Energy used as Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green

Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), *provided* that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy 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 PV Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this

Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

4.11 **Financial Statements**. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party

shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use 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.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that this Agreement is anything other than a purchase of the Product from the Seller or that this Agreement is anything other than a “service contract” within the meaning of Section 7701(e)(3) of the Code.

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 generation and sale of 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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **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) shall permit

Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter all Station Use (other than Station Use associated with transformers and power converters which are supplied from the AC terminals, for which Seller shall provide Buyer with good faith estimates as to the quantities of such Station Use consumed by the Facility upon Buyer's reasonable request). All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, that such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA, and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G, and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect, provided that Seller

shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form; provided that a Guaranty may not be provided as 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. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) the later of (i) 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), or (ii) one hundred eighty (180) days after such Delivery Term expiration or termination; *provided*, if Buyer does not provide written notice to Seller of any such payment obligations within one hundred eighty (180) days after such Delivery Term expiration or termination, clause (ii) above shall govern the termination of Seller's Performance Security obligation. Following the occurrence of both (a) and (b) above, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form; *provided, however*, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer's acceptance of a Guaranty shall be subject, in Buyer's sole discretion, to Guarantor meeting Buyer's credit requirements.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, including COVID-19; 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 except to the extent such event is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties’ performance hereunder may not be immediately or readily

ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 and Section 10.1 once any impacts of COVID-19 that constitute a Force Majeure Event result in any delay or nonperformance hereunder.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the 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 written Notice to the other Party; *provided*, Seller shall be entitled to six (6) additional months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12) month period despite exercising diligent efforts and (b) Seller provides Notice to Buyer at least sixty (60) days prior to the expiration of the original twelve (12) month period that contains (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, and (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably be restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section 10.4(b)(i). Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default

is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) 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) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (other than to the extent additional time is needed to mobilize construction at the Site, receive any necessary permits to implement such Storage Cure Plan, or remedy any serial defects of the Storage Facility, in which case, such one hundred eighty (180) day cure period may be extended to a maximum of [REDACTED] ([REDACTED] days) (a “**Storage Cure Plan**”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; [REDACTED]

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage and Termination Payments. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security and any interest accrued thereon if the Development Security is posted as cash. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) (Seller’s Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, less 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, allocable to the Facility (including in connection with acquisition, development, financing and construction thereof, but excluding any costs and expenses associated with the solar photovoltaic and energy storage

facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility)) 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 a 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 Facility-related assets (which exclude, for clarity, any assets associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility) if sold individually, or (b) the Facility, whichever is greater, regardless of whether or not any Seller asset or the Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's Facility-related assets or the Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination

Payment described in this Section 11.3 (b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.


11.3 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.

11.4 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.

11.5 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. 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.

11.6 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.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.



ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE

RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been

obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 Buyer's Representations and Warranties. As of the Effective Date, and in the case of Section 13.2(h) as of each date on which Buyer delivers financial statements to Seller pursuant to Section 8.10(a)(i)(B) (or, if Buyer's means of satisfying Section 8.10(a)(i) is through the public posting of financial statements, then as of the date Buyer publicly posts such financial statements), Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.



13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, 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(s) to accommodate reasonable requests from Lender(s) for adjustments to the reporting obligations under Sections 8.10(a)(ii) and 8.10(b) and to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(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.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of Notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date 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;

(h) 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

(i) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(d), 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 (a) utilizing tax equity or cash equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect or pose an undue administrative burden 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 thirty (30) days' notice by delivering a Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit S ("**Assignment Agreement**"), *provided* that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect

to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5 and Buyer and Seller's ability to make the representations and warranties contained therein. Buyer [REDACTED]

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) 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* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars (\$5,000,000), 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 Ten Million Dollars (\$10,000,000). Defense costs shall be provided

as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor Insurance. Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility and each other contractor Seller directly contracts with in connection with the Facility 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. The contractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). The contractors 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 thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least ten (10) 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, then, without restricting Buyer's remedies under Article 11, applicable Law or otherwise, Seller shall (in accordance with the applicable provisions

of Section 16.2) indemnify and defend Buyer against all claims and liabilities for which, and to the same extent that, Buyer would have been covered by Seller's insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for

taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents ("**Buyer's Indemnified Parties**"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its 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 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.

DAGGETT SOLAR POWER 3 LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA, a California joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Daggett Solar Project

Site includes all or some of the following APNs: See attached Schedule 1.

City: unincorporated San Bernardino County

County: San Bernardino County

Zip Code: 92327

Latitude and Longitude: 34.857883, -116.816181

Facility Description: A dedicated and separately metered 123 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated 61.5 MW/246 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

Delivery Point: Southern California Edison's Kramer substation

Generating Facility Metering Points: See Exhibit R.

Storage Facility Metering Points: See Exhibit R.

PNode: PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder, to reflect the PNode then closest to the Facility.

Transmission Provider: Southern California Edison

SCHEDULE 1 TO
EXHIBIT A
APNs

0515-011-03
0515-011-14
0515-011-15
0515-021-06
0515-021-07
0515-051-24
0515-051-25
0515-051-31
0515-051-36
0515-051-38
0515-041-21
0515-041-22
0515-041-28
0515-041-29
0515-051-03
0515-051-19
0515-051-04
0515-051-07
0515-051-09
0515-051-14
0515-051-15
0515-051-16
0515-151-09
0515-051-17
0515-051-22
0515-051-23
0515-061-02
0515-041-18
0515-041-09
0515-111-05

0515-111-06
0515-111-07
0515-111-08
0515-111-09
0515-131-11
0515-131-12
0515-131-13
0515-131-36
0515-111-10
0515-061-19
0515-071-02
0515-041-15
0515-041-25
0515-111-12
0515-111-13
0515-111-14
0515-111-15
0515-111-16
0515-151-04
0515-151-30
0515-151-29

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 commencement of 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 notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
 - b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month, and, within ten (10) days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2, subject to the limitation of liability set forth in Section 11.9. 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 from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**).

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b). The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
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 such date may be extended by Sections 2(b) and 4 of this Exhibit B, 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 such circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. Seller has not acquired by the Guaranteed Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - b. a Force Majeure Event occurs; or

- c. the Interconnection Facilities or Reliability Network Upgrades are not complete, commissioned, and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours (“Excess MWh”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

“Efficiency Rate Factor” means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

Efficiency Rate Factor = 100%

(B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

Efficiency Rate Factor = 100% – (Guaranteed Efficiency Rate – Efficiency Rate)

(C) If the Efficiency Rate is less than 75%, then:

Efficiency Rate Factor = 0

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the **“Storage Capacity Availability Payment True-Up”**), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity,

Capacity Availability Factor = $\frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{YTD Annual Storage Capacity Availability}}$

- (C) If the sum of (a) YTD Annual Storage Capacity Availability [REDACTED] times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\frac{((\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * [\text{REDACTED}])}{[\text{REDACTED}]}$

[REDACTED]

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the

Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

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

ANNUAL 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 PV 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 | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-4

MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes, in an amount not to exceed the lower of (i) twenty percent (20%) of the Expected Energy for the previous Contract Year or (ii) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty

(30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, *provided* that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF 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 Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is ____ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of ____ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is ____ MW AC and shall be the “**Installed Capacity**”; and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "**Effective Storage Capacity**"); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Daggett Solar Power 3 LLC, a Delaware limited liability company (“**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 _____.

DAGGETT SOLAR POWER 3 LLC

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[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. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized 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, electronic messaging (e-mail), or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance

with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized 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 GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and Daggett Solar Power 3 LLC, a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$ _____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms, unless Buyer has provided Notice to Seller pursuant to Section 8.8 of the Agreement that the Guaranteed Amounts have not been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it

has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument

executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT

TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Daggett Solar Power 3 LLC, a Delaware limited liability company (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

¹ To be repeated for each unit if more than one.

DAGGETT SOLAR POWER 3 LLC


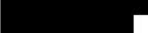
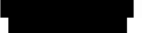
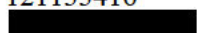
By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|--|---|
| DAGGETT SOLAR POWER 3 LLC, a Delaware limited liability company ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| All Notices: Street: 4900 Scottsdale Road, Suite 5000 c/o Solar Asset Management LLC City: Scottsdale, AZ 85251 Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com With a copy to: Street: 5790 Fleet Street, Suite 200 City: Carlsbad, CA 92008 Attn: General Counsel Phone: 760-710-2187 E-mail: jennifer.hein@clearwayenergy.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 E-mail: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: N/A Federal Tax ID Number: 36-4840955 | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com | Invoices: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com | Scheduling: TBD Attn: Phone: E-mail: |
| Confirmations: Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com | Confirmations: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: nkeefe@cleanpoweralliance.org |
| Payments: Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com | Payments: Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK:  ABA:  ACCT:  | Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT:  |
| Emergency Contact: Attn: VP Asset Management Phone: 480-424-1240 E-mail: Monique.menconi@clearwayenergy.com | Emergency Contact: Attn: Phone: E-mail: |

| | |
|---|---|
| DAGGETT SOLAR POWER 3 LLC, a Delaware limited liability company ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| | |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured (or calculated) and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
 - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
 - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

- (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Discharging Energy (as measured in Section II.D(7) above) divided by the total amount of Charging Energy (as measured in Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used thereafter for the purposes of Exhibit C unless updated pursuant to a subsequent Storage Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

The initial Supplementary Capacity Test Protocol outlined below shall be binding on the Parties until Section II.H modifies this Part III.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) For purposes related to testing capacity, record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter. For purposes related to testing round trip efficiency, record and store the AC energy charged to the Storage Facility at the Storage Facility Meter ("**Energy In**").
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) For purposes related to testing capacity, record and store the AC Energy discharged from the Storage Facility (in MWh) as measured at the Facility Meter, if applicable. For purposes related to testing round-trip efficiency, record and store the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant

to Section III.A.6 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable (“**Energy Out**”).

- Test Results

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.
- (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility’s full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.

- (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow 50 MVAR for ten (10) minutes.
 - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Storage Facility reactive power level at the Facility Meter.
 - (2) Command the Storage Facility to follow -50 MVAR for ten (10) minutes.
 - (3) Record and store the Storage Facility reactive power response.

- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month of the Delivery Term Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

where:

“**A**” is the “Available Effective Storage Capacity” (as defined below), which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation) (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor (as measured as of the most recent Storage Capacity Test)) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor (as measured as of the most recent Storage Capacity Test)). In calculating Storage Capability, the “available battery charging capability” and “available

battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines). The charging and discharging capability (in MWh) in a Calculation Interval shall be measured according to Section (b) of this Exhibit P.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “Available Effective Storage Capacity,” and “Available Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, including compliance with the Operating Restrictions as set forth herein, the calculations of Available Effective Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity taking into account Electrical Losses to the Delivery Point is less than 61.5 MW charging and 61.5 MW discharging at ■■■°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate based on manufacturer’s specifications to the applicable Calculation Interval.

(d) After ■■■ Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

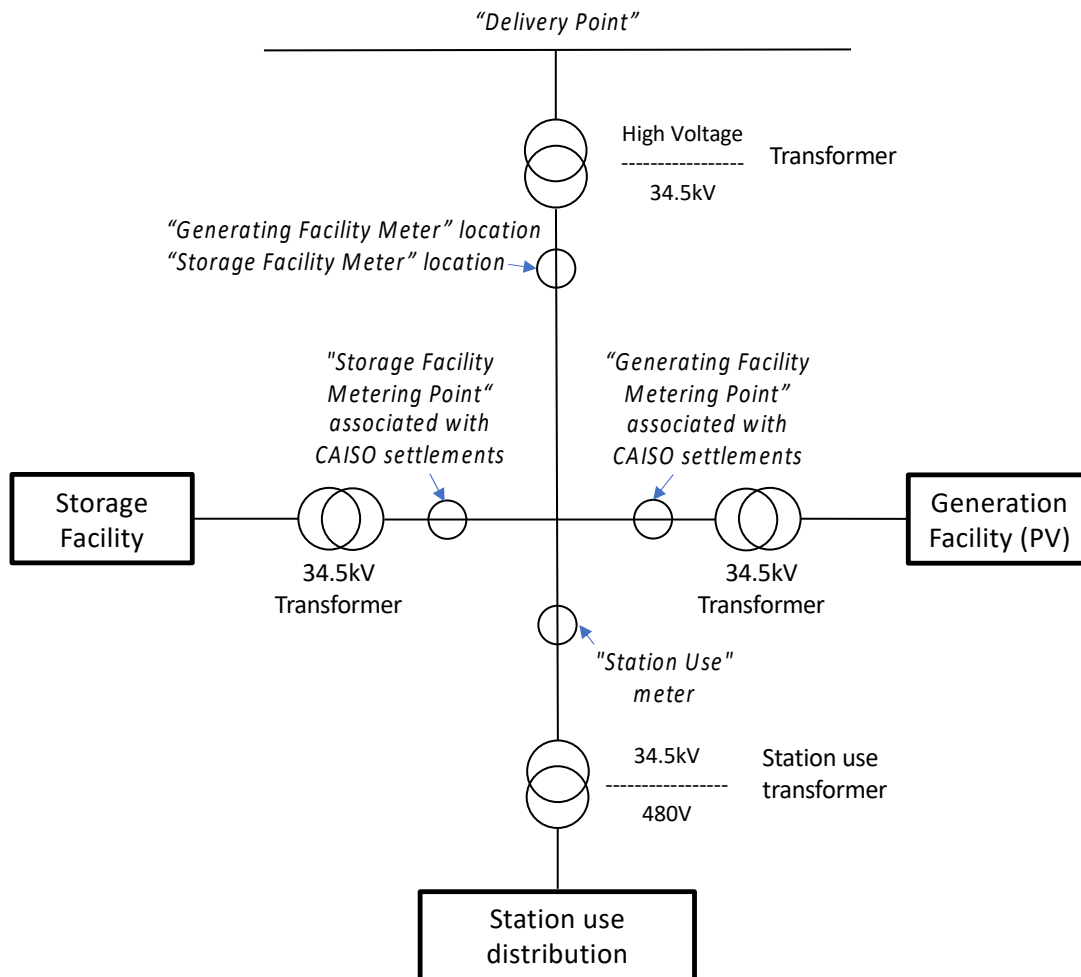
| | | | |
|--|--|------------------------------|--|
| File Update Date: | [XX/XX/20XX] | | |
| Technology: | Lithium-ion | | |
| Storage Unit Name: | [Unit Name and Number] | | |
| A. Contract Capacity | | | |
| Guaranteed Storage Capacity (MW): | 61.5 | | |
| Effective Storage Capacity (MW): | 61.5 | | |
| B. Total Unit Dispatchable Range Information | | | |
| Interconnect Voltage (kV) | 230 | | |
| Maximum Storage Level (MWh): | 246 | | |
| Minimum Storage Level (MWh): | 0 | | |
| Stored energy capability (MWh): | 246 | | |
| Maximum Discharge (MW): | 61.5 | | |
| Maximum Charge (MW): | 61.5 | | |
| Guaranteed Efficiency Rate: | See Cover Sheet | | |
| Maximum energy throughput (BET) (MWh/year): | [REDACTED] | | |
| C. Charge and Discharge Rates | | | |
| Mode | Maximum (MW) | Ramp Rate (MW/s) Description | |
| Energy (Charge) | 61.5 | [REDACTED] | |
| Energy (Discharge) | 61.5 | [REDACTED] | |
| D. Ancillary Services | | | |
| Frequency regulation is included: | Yes, subject to Operating Restrictions | | |
| Spin is included: | Yes | | |
| | | | |

II. ADDITIONAL OPERATING RESTRICTIONS

1. **Annual Cycles:** Maximum of [REDACTED] Cycles per Contract Year with no monthly cap.
2. **Daily Dispatch Limits:** [REDACTED] Cycles per day.

- [REDACTED]
4. **Grid Charging:** The Storage Facility shall not use grid energy to provide Charging Energy, subject to Section 3.13.
 5. **Scheduling Controls:** All manual dispatch commands must use the Seller-supplied EMS.
 6. **Resting State of Charge:** The average resting state of charge per Contract Year must be below [REDACTED] percent ([REDACTED]%).
 7. **Interconnection Capacity Limit:** Dispatch cannot cause Facility Energy to exceed the Interconnection Capacity Limit.

EXHIBIT R
METERING DIAGRAM



The Metering Diagram shall be subject to minor adjustments at the Commercial Operation Date based on the as-built design of the Facility; *provided*, such adjustments shall be consistent with the metering provisions of the Agreement.

EXHIBIT S

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among Daggett Solar Power 3 LLC, a Delaware limited liability company (“**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 Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[**NOTE: Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby

authorized by Financing Party to and shall act as Financing Party's agent with regard to scheduling Assigned Product.

- (e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries 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 (as defined in the PPA) 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 Section 11.1(a)(iv) occurs with respect to Financing Party; or
- (4) delivery of a written notice by Financing Party if any of the events described in Section 11.1(a)(iv) occurs with respect to PPA Seller.

- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

- (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 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 19.2, 19.4, 19.5, and 19.7 of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:
Name:
Title:

By:
Name:
Title:

FINANCING PARTY

By:
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [____], 2020 by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [____] and extending until [____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA¹

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 Term under the PPA

² To include transfer and settlement mechanics for RECs, as applicable.

AMENDMENT NO. 1 TO RENEWABLE POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [____], 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Daggett Solar Power 3 LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

RECITALS

- A. The Parties entered into that certain Renewable Power Purchase Agreement, dated as of October 2, 2020 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. **Amendments to the Agreement.**
 - (a) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “3/31/2023” is deleted and replaced with “12/1/2023”.
 - (b) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

| Milestone | Expected Date for Completion |
|----------------------------------|------------------------------|
| Expected Construction Start Date | Complete |

| Milestone | Expected Date for Completion |
|--|------------------------------|
| Initial Synchronization | 12/26/2022 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 4/15/2023 |
| Expected CAISO Commercial Operation Date | 10/1/2023 |
| Expected Commercial Operation Date | 12/1/2023 |

- (c) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|--|
| 1 – 15 | \$ [REDACTED] /MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|---|
| 1 – 15 | \$ [REDACTED] /kW-mo. (flat) with no escalation |

- (d) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

Seller's Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the ITC at an “energy percentage” of thirty percent (30%) and/or the PTC at a rate at COD of \$0.027/kWh for financing the Generating Facility and/or the Storage Facility.

- (e) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

“Charging Energy” means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, any such operating instruction shall be in accordance with the Operating Restrictions. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Property Tax Exemption” means the “new construction” exemption for property tax purposes under California Revenue and Taxation Code Section 73 or a similar Law.

“Renewable Rate” has the meaning set forth on the Cover Sheet; *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize (a) the PTC for the Generating Facility and that the PTC rate is higher than the PTC rate set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each \$0.0005/kWh that the PTC rate as of COD is above the PTC rate set forth in Seller’s Assumed Tax Credits, or (b) the ITC for the Generating Facility and that the ITC “energy percentage” claimed for the Generating Facility is higher than the ITC “energy percentage” set forth in Seller’s Assumed Tax Credits, the Renewable Rate shall be reduced by \$[REDACTED]/MWh for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%).

“Seller’s Assumed Tax Credits” has the meaning set forth on the Cover Sheet.

“Storage Rate” has the meaning set forth on the Cover Sheet; *provided*, (a) if the officer’s certificate provided by Seller pursuant to Section 2.2(j) states that the ITC “energy percentage” claimed for the Storage Facility is higher than the ITC “energy percentage” set forth as Seller’s Assumed Tax Credits, the Storage Rate shall be reduced by \$[REDACTED] per kW-month for each one (1) percentage point that the “energy percentage” for the claimed ITC rate is above thirty percent (30%), and (b) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing twenty-five percent (25%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$[REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), and (c) if Buyer causes Energy from the CAISO Grid to be used as Charging Energy, and Seller demonstrates to Buyer’s reasonable satisfaction that such Charging Energy results in Seller losing one hundred percent (100%) of the Property Tax Exemption for the Storage Facility, then the Storage Rate shall be \$[REDACTED] per kW-month (subject to reduction pursuant to section (a) of this definition), in case of (b) and (c), effective as of the earliest date when the applicable Governmental Authority applies the loss of the Property Tax Exemption (but in no event earlier than the COD); *provided further*, in the event Seller establishes to Buyer’s reasonable satisfaction that Buyer causing Energy from the CAISO Grid to be used as Charging Energy results in Seller losing a percentage of the Storage Facility Property Tax Exemption other than 25% or 100%, then if the percentage loss is (i) less than 25% then the Storage Rate shall increase from \$[REDACTED]/kW-month by an amount equal to \$[REDACTED] per kW-month for each one (1) percent greater than 0% or (ii) greater than 25% and less than 100%, then the Storage Rate shall increase from \$[REDACTED]/kW-month by an amount equal to \$[REDACTED] per kW-month for each one (1) percent increase greater than 25% plus the product of \$[REDACTED] per kW-month and twenty-five (25).

(f) The following Definitions are added to Section 1.1 as follows:

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

- (g) A new Section 2.2(j) is added as follows:
- (h) Seller has delivered to Buyer an officer's certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) (A) whether Seller will utilize PTC or ITC for financing the Generating Facility, (B) the ITC "energy percentage" rate Seller will utilize for financing the Storage Facility and, if applicable, the Generating Facility, and (C) if utilizing the PTC for financing the Generating Facility, the applicable PTC rate as of the date of such officer's certificate
- (i) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

- (j) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

- (k) Section 4.4(b) is replaced in the entirety with the following:

(k) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount equal to (i) the Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer's certificate provided by Seller pursuant to Section 2.2(k) states that Seller will utilize the PTC for financing the Generating Facility) (ii) (A) the Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986 as in effect for such Buyer Curtailment Period, converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

- (l) Section 4.5(h) is replaced in its entirety with the following:

(h) Pre-Commercial Operation Date Period. Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging

Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated on a daily basis.

- (m) The penultimate sentence of Section 4.5(a) is replaced in its entirety with the following:

The Parties understand that, for purposes of CAISO financial settlements, the CAISO will treat Charging Energy that is delivered from the Generating Facility as PV Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter.

- (n) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

- (o) New Sections 4.10(h) and (i) are added as follows:

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(i) Seller's obligations under Sections 3.10 and 4.10(h) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means all Facility Energy, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(h) means efforts consistent with and subject to Section 3.12.

- (p) In Section 10.4(a), the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)”.
- (q) In the final paragraph of Section 4 of Exhibit B, the phrase “one hundred eighty (180)” is replaced by the phrase “one hundred twenty (120)” and the phrase “two hundred seventy (270)” is replaced by the phrase “two hundred ten (210)”.
- (r) In Section 3 of Exhibit H, the phrase “and is capable of receiving Charging Energy from both CAISO Grid and the Generating Facility” is added to the end thereof.
- (s) In Section II of Exhibit Q, Item 4 “Grid Charging” is replaced in its entirety by the phrase “[Intentionally Omitted]”.

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment are resolved by this Amendment. Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment that Seller is aware of and could make as of the Effective Date of this Amendment, and Buyer acknowledges and agrees that: (a) the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the terms of the Agreement due to circumstances arising after the Effective Date of this Amendment or of which Seller is not aware or cannot make a related claim as of the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment. Seller represents and warrants as of the Effective Date of this Amendment that, except as set out on Attachment 1, neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.

- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

“SELLER:”

DAGGETT SOLAR POWER 3 LLC

By: _____

Printed Name:

Title:

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____

Printed Name:

Title:

ATTACHMENT 1

Development Cure Period Claims

Claims **for** [REDACTED] relating to the events described below:

- Delays resulting from module delivery delays impacted by (i) U.S. Customs and Border Protection's enforcement of [REDACTED], (ii) passage of the Uyghur Forced Labor Prevention Act, and (iii) [REDACTED] the COVID-19 pandemic, as described in notices sent to Buyer on February 4, 2022, March 18, 2022, and May 20, 2022, and as further detailed in (i) that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED], and (ii) that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED], each dated May 25, 2022 (as modified by the revised Attachment B sent to on Buyer June 1, 2022).
- Delays resulting from module delivery delays impacted by the [REDACTED] investigations by the U.S. Department of Commerce into whether solar cells and modules [REDACTED] are circumventing existing antidumping and countervailing tariffs on solar cells and modules from China, as described in the notices sent to Buyer on April 19, 2022 and May 20, 2022, and as further detailed in that certain Force Majeure Claim Assessment Form (Claim) – [REDACTED] Delay dated May 25, 2022 (as modified by the revised Attachment B sent to Buyer on June 1, 2022).
- Delays arising out of the delay communicated to Seller by SCE related to delays in delivery of SCE's station service voltage transformer, as described in the notices sent to Buyer on April 19, 2022, May 11, 2022 and May 20, 2022, and as further detailed in that certain Force Majeure Claim Assessment Form (Claim) – SCE In-Service Delay dated May 25, 2022 (as modified by the revised Attachment B sent to Buyer on June 1, 2022).

CONFIDENTIAL

RENEWABLE ENERGY + STORAGE
AUGUST 27, 2021 (CPA DRAFT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Desert Quartzite, LLC, a Delaware limited liability company

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: Solar photovoltaic generation plus battery energy storage

Milestones:

| Milestone | Expected Date for Completion |
|---|------------------------------|
| Evidence of Site Control | Complete |
| Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR | Complete |
| Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities | Complete |
| Executed Interconnection Agreements (Facility will have two Interconnection Agreements; both are executed) | Complete |
| Financial Close (Seller expects Affiliate provided construction financing) | N/A |
| Expected Construction Start Date | ██████████ |
| Initial Synchronization | 7/15/2023 |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 7/15/2023 |
| Expected Date of CAISO Commercial Operation | 11/15/2023 |

| Milestone | Expected Date for Completion |
|------------------------------------|------------------------------|
| Expected Commercial Operation Date | 2/1/2024 |

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

| Contract Year | Expected Energy (MWh) |
|---------------|-----------------------|
| 1 | 938719 |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Guaranteed Capacity: 450 MW of total Facility capacity

Guaranteed Storage Capacity: 150 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 300 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |

Guaranteed Construction Start Date: November 1, 2022

Guaranteed Commercial Operation Date: March 1, 2024

Contract Price

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|---|
| 1 – 15 | \$[REDACTED]/MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|--|
| 1 – 15 | \$[REDACTED]/kW-mo. (flat) with no escalation |

Product

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status for each of the Generating Facility and the Storage Facility

Anticipated Flexible Capacity from the Storage Facility: 150 MW.

Scheduling Coordinator: Buyer or Buyer's designated SC

Security Amounts:

Development Security: \$60/kW of Guaranteed PV Capacity plus \$90/kW of Guaranteed Storage Capacity

Performance Security: \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity

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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 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“Ancillary Services” means those ancillary services specifically identified in Exhibit Q, as each such ancillary service is defined in the CAISO Tariff as of the Effective Date, subject to Section 4.1(c).

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Anticipated Flexible Capacity” means the amount and category of Flexible Capacity identified on the Cover Sheet which Seller anticipates as of the Effective Date that the Facility will be qualified by the CAISO to provide to Buyer.

“Approved Forecast Vendor” means (x) any of CAISO or Vaisala, or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Storage Facility) within the Storage Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the operation of the Storage Facility.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Generating Facility capacity, Available Effective Storage Capacity and Storage Capability.

“Availability Standards” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“Available Effective Storage Capacity” has the meaning in Exhibit P.

“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.

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following (a) and (b):

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than the full amount of PV Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) either:

(i) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (A) not having submitted a Self-Schedule for the MWs subject to the reduction or (B) having submitted a Self-Schedule in the Day-Ahead Market for the MWs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market and did not receive a Schedule from the CAISO in the Real-Time Market for such MWs subject to the reduction; or

(ii) Buyer or the SC submitted a Self-Schedule for the period covered by the curtailment and:

(A)

[REDACTED]

(B)

[REDACTED]

If the Generating 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 curtailed Energy that was not delivered from the Generating Facility 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 PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default or other breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Commercial Operation” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including

the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means, collectively, Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility or the Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy or PV Energy (as applicable) delivered to the Delivery Point or Generating Facility Meter (as applicable) qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in

Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility. Prior to the Grid Charging Effective Date, the Parties acknowledge that with reference to Exhibit R, all Charging Energy will originate at, and flow directly from, the Generating Facility, through the Generating Facility Meter and Storage Facility Meter, to the Storage Facility, and will not cross the Facility’s high voltage transformer or Delivery Point.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to charge Charging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, if applicable, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility (as adjusted to reflect Electrical Losses). Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“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:

(i) prior to the date on which Seller has achieved CAISO Commercial Operation for the Generating Facility, an amount equal to (a) the Development Security amount required hereunder divided by (b) ninety (90); and

[REDACTED]

[REDACTED]


“**Commercial Operation Storage Capacity Test**” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“**Compliance Actions**” has the meaning set forth in Section 3.12(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Consent to Collateral Assignment**” has the meaning set forth in Section 14.2.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“**CPM Price**” has the meaning set forth in Section 3.8(b).

“**CPUC**” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) as a result of an Oversupply Curtailment [REDACTED]

(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 Agreements with the Transmission Provider or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided*; the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Cycles” means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during any Settlement Interval was less than zero (0), Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” means the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions

and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges that are not reimbursable by Buyer pursuant to this Agreement under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy. Any instruction to discharge the Storage Facility during a Buyer Dispatched Test shall be considered a Discharging Notice, and any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"Disclosing Party" has the meaning set forth in Section 18.2.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Date" has the meaning set forth on the Preamble.

"Effective Flexible Capacity" 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.

"Effective Storage Capacity" means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

"Efficiency Rate" means the rate calculated pursuant to Exhibit O by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"Efficiency Rate Factor" has the meaning set forth in Exhibit C.

"Electrical Losses" means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility, in each case as applicable. If any amounts included within the definitions of "Electrical Losses" and "Auxiliary Use" hereunder are

duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(12) of Exhibit O.

“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 Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“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.

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating PV Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence

gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), 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 PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Grid Charging Effective Date” has the meaning set forth in Section 3.13.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Idle Period Auxiliary Use” means Auxiliary Use consumed by the Storage Facility during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the applicable amount of Scheduled Energy.

[REDACTED]

[REDACTED]

[REDACTED]

“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 commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement(s)” means the interconnection agreement(s) entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreements, in the amount of 300 MW.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreements.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit U.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. 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 (on a consolidated basis with its Affiliates) that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, or (failing such operations experience) has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the

exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a load-serving entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Generating Facility or the Storage Facility, plus any Replacement RA (if applicable) that was provided by Seller to Buyer for such Showing Month, was less than the Qualifying Capacity of the Generating Facility or the Storage Facility, respectively, for such month (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Generating Facility’s or the Storage Facility’s Net Qualifying Capacity or any Replacement RA, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, 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 Flexible Capacity and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, 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. The SC may be Buyer if Buyer meets all applicable requirements.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including each 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*, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or **“State of Charge”** means (a) the level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility, and includes all Auxiliary Use.

“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit

C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter shown in Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time may be greater than the Stored Energy Level as defined in the preceding sentence, and the Facility’s energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“Supply Chain Code” has the meaning in Exhibit T.

“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 or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) 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 (ii) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**UIE**” has the meaning set forth in Section 4.5(k)(i).

“**Ultimate Parent**” means EDF Renewables, Inc., a Delaware corporation.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term, unless the context otherwise requires;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); provided, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years

following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) Necessary Interconnection Agreements 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 Agreements delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Generating Facility, and of the Storage Facility (for general charging and discharging into the CAISO market but not for provision of Ancillary Services), have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect;

(e) Seller has obtained each CAISO Certification for the commencement of operation of the Facility (for general charging and discharging into the CAISO market but not for provision of Ancillary Services);

(f) Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable), (and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable), in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date, including (as applicable) 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;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(i) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator except to the extent Buyer has failed to take any commercially reasonable action necessary to become or designate the Scheduling Coordinator; and

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation 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: (i) use commercially reasonable efforts consistent with Prudent Operating Practice to attempt to ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with applicable requirements expressly set forth in the Supply Chain Code; and (ii) implement (and cause its Affiliates involved with the Facility to implement) commercially reasonable audit procedures consistent with Prudent Operating Practice with respect to Supply Chain Code compliance matters, and use commercially reasonable efforts consistent with Prudent Operating Practice to attempt to require all of their direct contractors and suppliers involved with the Facility (A) to implement such audit procedures and (B) to require all their sub-contractors and sub-suppliers to implement such audit procedures. Notwithstanding the foregoing, in recognition that Seller cannot reasonably be expected to control all third parties in the Facility supply chain, any failure of Seller to comply with the preceding requirements of this Section 2.3(b) or the Supply Chain Code (and any violations of the Supply Chain Code) shall not be considered a breach or default of this Agreement except where (and only where) such failure or violation is either (a) directly committed by Seller, or a Seller Affiliate involved with the Facility or (b) in the case of a failure or violation committed by Seller's or its Affiliates' direct suppliers or contractors (or their sub-contractors or sub-suppliers, or other supply chain participants involved with the Facility), Seller failed to use commercially reasonable efforts consistent with Prudent Operating Practice either (i) to attempt to require the inclusion of contract provisions based upon this Section 2.3 (as appropriate in Seller's reasonable judgment) in Seller's contract(s) with Seller's direct contractor or supplier involved with or responsible for (or in the chain of, as applicable) such failure or violation or (ii) to implement commercially reasonable audit procedures consistent with Prudent Operating Practice which, had such procedures been implemented, would reasonably have been

expected to avoid such failure or violation. Seller shall notify Buyer reasonably promptly if Seller becomes aware of any breach of its obligations under this Section 2.3(b).

(c) Upon the request of Buyer from time to time, Seller shall share with Buyer the written reports or other written results of any Supply Chain Code related audits Seller performs or that Seller arranges (and which are reasonably available to Seller) related to the Facility, as may be reasonably redacted for any confidential or proprietary information. To the extent that Seller does not perform an audit of any material relevant Supply Chain Code matters related to the Facility using a qualified independent third-party auditor, then at Buyer's request, Seller shall use commercially reasonable efforts to cooperate with Buyer to allow Buyer, at Buyer's sole expense, to retain an independent auditor to audit such Supply Chain Code matters.

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 or other Buyer breach hereunder, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** Subject to Section 4.9: (i) during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility ; and (ii) upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the

Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products of the Generating Facility

(but not Storage Product, subject to Section 4.5(h)) on an as-available basis. As compensation for such Test Energy and associated Product (but not Storage Product, subject to Section 4.5(h)), Buyer shall pay Seller an amount equal to, for the first 200,000 MWh of Test Energy, seventy percent (70%) of the Renewable Rate, for the next 200,000 MWh of Test Energy, fifty percent (50%) of the Renewable Rate, and thereafter zero dollars (\$0) per MWh (together, the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 Capacity Attributes. Seller shall request Full Capacity Deliverability Status for the Generating Facility and the Storage Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Generating Facility and the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Generating Facility and the Storage Facility qualifies to provide all Resource Adequacy Benefits, including (as applicable) Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.8 Resource Adequacy Failure.

(a) **RA Deficiency Determination.** Subject to this Section 3.8 and to Section 3.12, for each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month with respect to the Generating Facility or the Storage Facility (as applicable), Seller shall pay to Buyer

an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity of the Generating Facility or the Storage Facility (as applicable) (or, if Seller has not obtained certification from the CAISO of the Generating Facility’s or the Storage Facility’s Qualifying Capacity, the amount of Qualifying Capacity the Generating Facility or the Storage Facility (as applicable) would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (B) the Net Qualifying Capacity of the Generating Facility or the Storage Facility (as applicable) plus any Replacement RA that was provided by Seller to be included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer’s action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by (ii) the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”);

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all 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 (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Eligibility**. Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility or the Generating Facility (as applicable) 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 (or Generating Facility's, as applicable) 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 (and Buyer's payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard**. Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap**. If a change in Law occurring after the Effective Date has increased Seller's costs or expenses to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of such costs or 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) To the extent there are any actions that Seller might take to comply with changes in Law the costs and expenses of which are subject to the Compliance Expenditure Cap as set forth in the first paragraph above, such actions shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not require Seller to (i) install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date or (ii) charge the Storage Facility with Energy from the grid prior to the Grid Charging Effective Date. To the extent there are no such Compliance Actions that Seller might take, Seller shall be excused from its obligations under this Agreement that are made subject to this Section 3.12, including related to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes to the extent impaired by such change in Law. Additionally, to the extent any change in Law results in an increase in the potential liability of Seller to Buyer for RA Deficiency Amounts under Section 3.8 (excluding only changes in Law

solely related to Mechanical Availability that are addressed in Section 3.8) for which there are no Compliance Actions that would eliminate such increases in liability, Seller shall be excused from such increases in liability.

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such costs (as may be revised and updated by Seller in its reasonable discretion after a Buyer rejection of the previously proposed 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 in a commercially reasonable timeframe and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including discussions to commence no later than one hundred eighty (180) days prior to the end of the fifth (5th) Contract Year regarding the use of grid energy to provide Charging Energy to commence at the beginning of the sixth (6th) Contract Year, or earlier if a change of applicable Laws makes such change feasible at an earlier date; *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 in their sole discretion as set forth in a written agreement. The date on which the Parties execute any such agreement is herein referred to as the “**Grid Charging Effective Date**”.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver

the Product to Buyer at the Delivery Point (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging 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 PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Forecasting. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of PV Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) Available Effective Storage Capacity, and (iv) Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. The Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. The Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails

to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down or ramping up to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. Subject to the provisos in Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller

shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order (without double counting any penalties for which Seller is liable under Section 4.5(k)(i)).

(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 CAISO and Buyer's SC 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 reasonably 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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, the provisions of Section 4.5(a), and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then Section 4.5(k) shall apply, and Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. During any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority (it being acknowledged, however, that any deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not result in a breach of or give rise to Seller liability under this Section 4.5(d)). Subject to the availability of Energy in the Storage Facility, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as automatically updated in accordance with the definition of Discharging Notice).

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental

Authority or the Transmission Provider. Buyer's SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or anyone acting on behalf of Seller charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not give rise to Seller liability under any other provisions hereof (including Sections 4.5(c), (d), and (f))), it shall be a breach by Seller and Seller shall reimburse Buyer for any costs (including the cost of Energy used for charging the Storage Facility, and any other CAISO costs, charges or penalties) arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same (after notice from Buyer and a reasonable period to implement such procedures), then it shall be a Seller Event of Default.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period, etc. Unless the Parties agree otherwise in writing, prior to the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility; *provided*, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility, (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Unless the Parties agree otherwise in writing, following the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period following the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated for partial months.


(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment

consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”).

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation;



(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3 or Exhibit P, and is not capable of responding to CAISO Dispatches (except if due to Seller not having obtained its initial CAISO Certification for the provision of Ancillary Services, the sole remedy for which is set forth in Section 4.5(k)(iii)), such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as provided in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer’s sole remedy arising out of any such incapability of responding to CAISO Dispatches.

(iii) For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility either (A) fails to respond at all to an Ancillary Services Dispatch that is consistent with the Operating Restrictions and the CAISO Tariff, or (B) is not certified by the CAISO to provide Ancillary Services, the Storage Capability for such Calculation Interval shall be deemed reduced for

purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer's sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch that is consistent with the Operating Restrictions and the CAISO Tariff or to be certified by the CAISO to provide Ancillary Services.

(iv) In any case where Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(l) Station Use and Idle Period Auxiliary Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge: (i) during charging and discharging of the Storage Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use that is integral to charging or discharging the Storage Facility (e.g., HVAC, fire suppression systems, telecommunications equipment and battery management systems) may be served by Charging Energy or Discharging Energy; *provided*, only Auxiliary Use loads that are reflected in Energy In and Energy Out during Efficiency Rate testing under Exhibit Q may be served by Charging Energy or Discharging Energy pursuant to this Section 4.5(l)(i), (ii) except as contemplated by preceding clause (i), or the following sentence, Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use), (iii) the supply of Auxiliary Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f), (iv) Buyer shall use all reasonable efforts to ensure that the Storage Facility is charged each day in a manner necessary so that eleven (11) MWhs of Energy is available during each nightly period from sunset to sunrise to supply Idle Period Auxiliary Use, (v) Seller may serve Idle Period Auxiliary Use needs during each nightly period from sunset to sunrise with up to eleven (11) MWhs of Energy stored in the Storage Facility, and (vi) Seller shall reimburse Buyer for all Idle Period Auxiliary Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer is used by Seller for Auxiliary Use (including Idle Period Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible for (and shall reimburse Buyer, as applicable) any and all costs, penalties and charges resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff).

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder to Seller in relation to the operation of the Facility:

(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 based on the likelihood of dispatch by Buyer), and Seller shall (A) reimburse Buyer for any costs, penalties or charges imposed by CAISO or the CPUC in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) subject to Prudent Operating Practices, 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 from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing (such approval not to be unreasonably withheld if such Planned Outage cannot be scheduled outside of such period consistent with Prudent Operating Practice). 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 Agreements 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 to the extent such Force Majeure Event prevents Seller from delivering any such Product.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, (i) any reduction in Storage Capability or Availability Effective Storage Capacity resulting from Seller’s reductions in Product deliveries pursuant to this Section 4.6 shall not excuse any such reductions in the Storage Capability and/or Availability Effective Storage Capacity and/or Availability Effective Storage Capacity for purposes of calculating the Annual Storage Capacity Availability pursuant to Exhibit P to the extent any such reduction otherwise constitutes an Unavailable Calculation Interval pursuant to Exhibit P, (ii) any reduction in Product resulting from this Section 4.6 shall not reduce Seller’s obligations in respect to RA Shortfall Amounts otherwise arising under Section 3.8, except to the extent that such reduction is the result of circumstances set forth in Sections 4.6(d), and (iii) subject to the terms and conditions of this Agreement, Buyer has no obligation to pay Seller for any Product from the Generating Facility for which the associated PV Energy is not or cannot be

delivered to the Delivery Point (except to the extent delivered to the Storage Facility as Charging Energy) as a result of any of the conditions in this Section 4.6 or a Curtailment Order, other than Section 4.6(c) as to any Buyer Curtailment Period.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). **“Guaranteed Energy Production”** means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point or to the Storage Facility. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer or to the Storage Facility but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (**“Lost Output”**). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (**“Energy Replacement Damages”**); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.8 **Storage Facility Availability; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [REDACTED] percent ([REDACTED]%) (the **“Guaranteed Storage Availability”**), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment by the Efficiency Rate Factor pursuant to Section (d) of Exhibit C.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the

Installed Storage Capacity; *provided*, Buyer's exclusive remedies for Seller's failure to satisfy such obligation are as set forth in Section 4.5(k).

4.9 **Storage Facility Testing; Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to request or run (as applicable) additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer and CAISO Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the

Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test, and Buyer shall pay all Charging Energy costs (and other CAISO costs and charges); for clarity, Buyer shall not be excused from paying Seller the Renewable Rate for all PV Energy used as Charging Energy during Buyer Dispatched Tests. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment to CAISO for the Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date (to the extent reasonably capable of being done prior to the Commercial Operation Date and, if not, as soon as reasonably possible thereafter), Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with

registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy 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 PV Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in the normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any error or omission of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment next coming due to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS (to the extent such steps are reasonably

capable of being taken prior to the first delivery under this Agreement) will be taken prior to the first Energy delivery under this Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that, under applicable Law, WREGIS Certificates for CAISO “co-located” facilities like the Facility will be created equivalent to the amount of PV Energy that is generated and metered at the Generating Facility (adjusted for losses to the Delivery Point, but without taking into account Energy losses associated with use of the Storage Facility), and Seller shall deliver WREGIS Certificates in amounts consistent with such understanding, subject to any change in any such Law.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, 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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **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 Agreements, 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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such shared facilities and/or co-tenancy agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use (as may be consistent with CAISO rules), (ii) provide for separate metering of the Facility, including by obtaining interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for the Facility's sole use, subject to applicable CAISO rules, (iii) not allow any other generating or energy storage facilities not included in the Facility but using Shared Facilities to be included within the Facility's CAISO Resource IDs, and (iv) provide that in the event of any discretionary allocation under such agreements of curtailment of output from generating or energy storage facilities using the Shared Facilities (not resulting from the fault of Seller or improper operation of the Facility) shall not be allocated to the Facility other than in proportion to the Facility's pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

ARTICLE 7 METERING

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter all Station Use and all Auxiliary Use consumed by the Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility

and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility. Notwithstanding the foregoing or any other provision hereof, the Parties acknowledge that Seller is evaluating whether or not to combine the two Facility Interconnection Agreements into a single Interconnection Agreement, in connection with such evaluation Seller may desire to use two separate CAISO Resource IDs for each of the Generating Facility and the Storage Facility (i.e., four separate CAISO Resource IDs total) and, if so, Seller shall provide notice thereof to Buyer as soon as reasonably possible, but in any event at least sixty (60) days prior to the Commercial Operations Date, and the Parties shall cooperate to identify and implement such administrative details as may be appropriate to carry out such structure consistent with the other provisions of this Agreement.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, and (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, or if the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement result in charges or penalties [REDACTED] or other adverse consequences to either Party, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld. Additionally, with respect to such automatic adjustments to Charging Notices and Discharging Notices, until the Parties agree on an alternative approach, Buyer shall issue (or cause to be issued) all Charging Notices and/or Discharging Notices (as applicable) in a manner that minimizes the need for any such automatic adjustments and Buyer shall be responsible for all CAISO charges, costs and penalties that result from Seller's compliance with any such automatic adjustment.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from CAISO to test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Idle Period Auxiliary Use, Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer's receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter

inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12)-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, C, G and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due

and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security or Performance Security for another permitted form.

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; (c) as available, Buyer’s annual report, which will include an

overview of customer rate classes and retention rates (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members; (d) committed, unused bank line of credit as of the end of each fiscal quarter; and (e) other financial and operational information for the prior fiscal quarter as may be reasonably requested by Seller's financing parties.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, and 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 or pandemic (including the COVID 19 pandemic (and variants thereof) [REDACTED])

landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; [REDACTED]; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions 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. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by

the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event 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 Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to

remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) except for circumstances contemplated by Section 10.4(a), the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, in each case (A) and (B) as such dates may be extended in accordance with Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the applicable portion of the annual forecast provided by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (or such longer period up to [REDACTED] ([REDACTED]) months total as may be necessary for the repair or replacement of a Facility transformer in the event of any damage or destruction thereto not due to a Force Majeure Event) ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, subject to Section 10.4(b), if a Force Majeure Event prevents Seller from completing a Cure Plan within its required timeframe, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event;

(iv) if, in any Contract Year, the Annual Storage Capacity Availability calculated under Section (a) of Exhibit P following the end of any calendar month (starting with the calculation following the second month for such Contract Year) multiplied by the weighted average Effective Storage Capacity of the applicable portion of such Contract Year is not at least

seventy percent (70%) of the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within twenty (20) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition, along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (or such longer period up to [REDACTED] ([REDACTED]) months total as certified by the Licensed Professional Engineer could not reasonably be accomplished in less time) ("**Storage Cure Plan**") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). Subject to 10.04(b), if a Force Majeure Event prevents Seller from completing a Storage Cure Plan within its required timeframe, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any 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 Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage Payment; Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security amount plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security plus, if the Development Security is posted as cash, any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and

payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then 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, through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of

market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts) to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated 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.

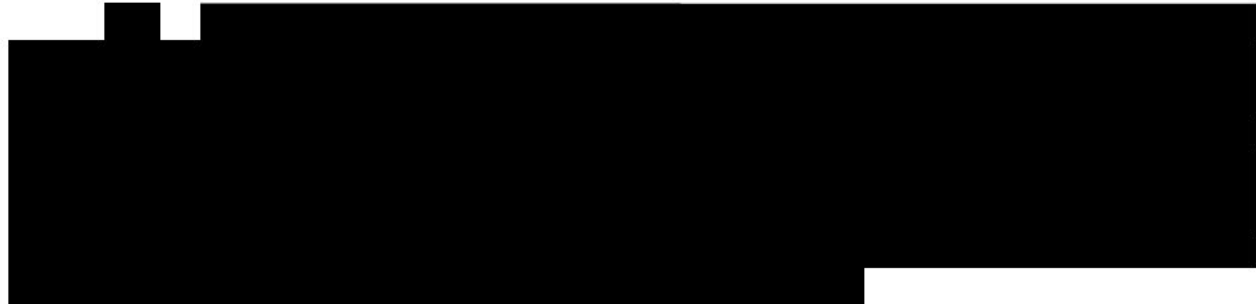
Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by

the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other express remedy or measure of damages are provided herein 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 OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8, 4.10(e), 10.4, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller’s Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified

to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Neither Seller nor its Affiliates have received notice specifically related to the Facility from, or been advised by, any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility, or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except

where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, 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 S, along with such changes as may be reasonably requested by any Lender ("**Consent to Collateral Assignment**").

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon reasonable prior Notice to Seller, provided that as conditions to any such assignment: (i) 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 ("**Assignment Agreement**"), and provided further that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall 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. As reasonably requested by Seller, Prepayment Assignee shall provide Seller with information and documentation with respect to Prepayment Assignee and the proposed municipal prepayment financing transaction.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after

Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used by (or provided by) Seller in connection with the Facility (an "**IP Indemnity Claim**").

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be

represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), 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 Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction

against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempts to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in

addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, 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, after the Effective Date, a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[SELLER]

By: _____
Name: _____
Title: _____

CLEAN POWER ALLIANCE OF
SOUTHERN CALIFORNIA, a California
joint powers authority

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Desert Quartzite Solar Project

Site includes all or some of the following APNs:

| |
|-----------|
| 879110008 |
| 879110011 |
| 879110012 |
| 879110010 |
| 879110007 |
| 879110006 |
| 879110001 |
| 879090035 |
| 879090034 |
| 879090033 |
| 879080024 |
| 879080021 |
| 879080020 |
| 879080027 |
| 879080026 |
| 879080022 |

City: Blythe

County: Riverside

Zip Code: 92225

Latitude and Longitude: 33° 34' 01 N, 114° 45' 07" W

Facility Description: A solar photovoltaic generating facility with a net nameplate capacity of 300 MW AC co-located with a battery storage facility with net nameplate capacity of 150 MW AC and 600 MWh located near the city of Blythe, CA in Riverside County

Delivery Point: SCE Colorado River Substation

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: As established by CAISO NRI Process

Transmission Provider: Southern California Edison

Additional Information: N/A

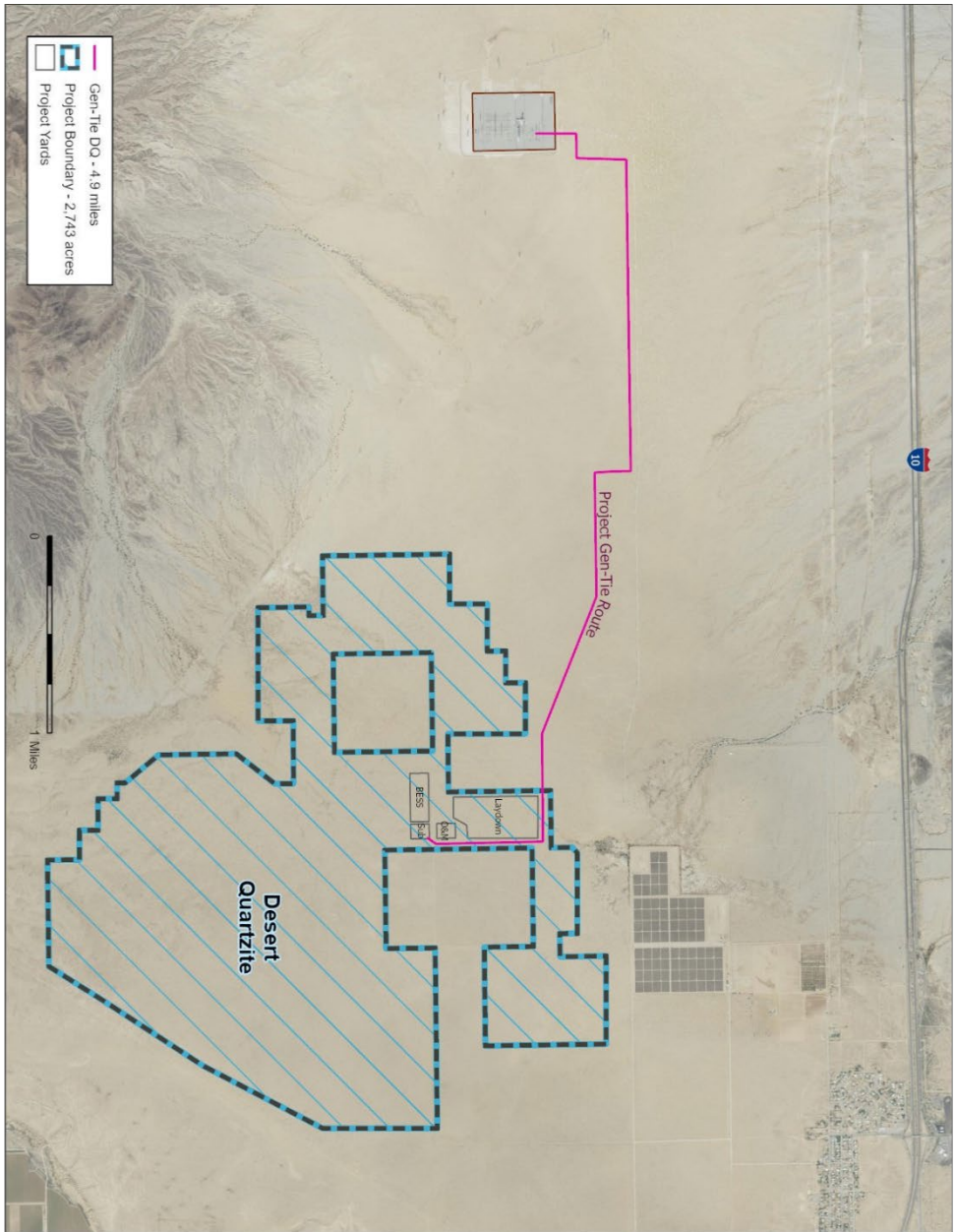


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of one or more engineering, procurement, and construction contracts (or similar contract(s)) and issuance of one or more notices to proceed (or reasonable equivalent) to a contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary to fully authorize all engineering, procurement and construction of the Facility to begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer. If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).
- 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 [REDACTED] ([REDACTED]) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).
3. **Termination for Failure to Achieve Commercial Operation.** Except for circumstances contemplated by Section 10.4(a), 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.** Independent of Seller’s extension rights under Sections 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of

Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. Seller has not acquired the [REDACTED] 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 or [REDACTED] occurs, [REDACTED]
- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the original expected [REDACTED] date as set forth in the Cover Sheet, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary: (A) 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 (B) the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and/or any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each calendar month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity or Efficiency Rate is adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity or Efficiency Rate is applicable.

“**Efficiency Rate Factor**” means:

(A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

$$\text{Efficiency Rate Factor} = 100\%$$

(B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

$$\text{Efficiency Rate Factor} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

(C) If the Efficiency Rate is less than 75%, then:

Efficiency Rate Factor = 0

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability for a given Contract Year is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence; *provided further*, if the Storage Capacity Availability Payment True-Up (or remaining portion thereof after previous offsets against payments owed from Buyer to Seller) is greater than the Monthly Capacity Payment due and owing, then Seller shall not owe Buyer a payment (if there are remaining payments to be made by Buyer pursuant to this Agreement, and if not, then Seller shall pay to Buyer any remaining balance therefore), but Buyer shall offset against each successive Monthly Capacity Payment until Buyer has recovered the entire Storage Capacity Availability Payment True-Up. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“**Storage Capacity Availability Payment True-Up Amount**” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments for a given Contract Year

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“**Capacity Availability Factor**” means:

(A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{YTD Annual Storage Capacity Availability}}$$

- (C) If the product of [(i) YTD Annual Storage Capacity Availability plus (ii) Force Majeure Unavailability], times (iii) the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = (\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 1.5 - (\text{Force Majeure Unavailability} * 0.5)$$

provided, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that none of the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. Buyer shall submit an NQC request to CAISO in relation to the Generating Facility and the Storage Facility as early as is reasonably possible prior to the Commercial Operation Date. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer's SC (which may be Buyer) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(ii) Notices. Buyer's SC (which may be Buyer) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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) telephone or electronic mail to the personnel designated to receive such information. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(iii) CAISO Costs and Revenues. Except as otherwise set forth in this part (iii) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO

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, except to the extent any Non-Availability Charges arise from Scheduling Coordinator's violation of the Tariff. Subject to Section 4.5(k) of the Agreement, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer 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.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's

compliance, with any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 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

FORM OF MONTHLY EXPECTED PV ENERGY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-3

FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT

[MW Per Hour] – *[Insert Month]*

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-----|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN | | | | | | | | | | | | | | | | | | | | | | | | |
| FEB | | | | | | | | | | | | | | | | | | | | | | | | |
| MAR | | | | | | | | | | | | | | | | | | | | | | | | |
| APR | | | | | | | | | | | | | | | | | | | | | | | | |
| MAY | | | | | | | | | | | | | | | | | | | | | | | | |
| JUN | | | | | | | | | | | | | | | | | | | | | | | | |
| JUL | | | | | | | | | | | | | | | | | | | | | | | | |
| AUG | | | | | | | | | | | | | | | | | | | | | | | | |
| SEP | | | | | | | | | | | | | | | | | | | | | | | | |
| OCT | | | | | | | | | | | | | | | | | | | | | | | | |
| NOV | | | | | | | | | | | | | | | | | | | | | | | | |
| DEC | | | | | | | | | | | | | | | | | | | | | | | | |

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EXHIBIT F-4

FORM OF MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY REPORT

[MWh Per Hour] – [*Insert Month*]

| | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 3 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 4 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 5 | | | | | | | | | | | | | | | | | | | | | | | | |
| [insert additional rows for each day in the month] | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 29 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 30 | | | | | | | | | | | | | | | | | | | | | | | | |
| Day 31 | | | | | | | | | | | | | | | | | | | | | | | | |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

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 Renewable Rate, 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: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a) $(A - B)$, (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 Performance Measurement Period, 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 that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.
7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required by the CAISO for such meters.
8. The Storage Facility and its meters have been designed and installed in a manner such that all Energy used for Auxiliary Use within the Storage Facility is metered, and there is no Station Use within the Facility (outside of the Storage Facility) that is served by Energy from the Storage Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The peak electrical output of the Generating Facility at the Delivery Point is ___ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of ___ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is ___ MW AC and shall be the “**Installed Capacity**”; and

(d) Such Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "**Effective Storage Capacity**"); and

(b) Such Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [SELLER ENTITY] ("**Seller**") to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
- (2) the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A 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\$[XXXXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed

documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF ASSIGNMENT AGREEMENT

[NTD: Preliminary draft subject to negotiation and mutual agreement of both Parties]

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [_____] by and among [PPA Seller], a [_____] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller 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 that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

Email: _____

4. Miscellaneous. Sections ☐ [Severability], ☐ [Counterparts], ☐ [Amendments] and ☐ [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; provided, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

Title:

FINANCING PARTY

By:

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:

Name:

Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement dated [] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [] and extending until [], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA¹

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 3.8 of the Agreement, Seller hereby provides the below Replacement RA

Unit Information¹

| | |
|--|--|
| Name | |
| Location | |
| CAISO Resource ID | |
| Unit SCID | |
| Prorated Percentage of Unit Factor | |
| Resource Type | |
| Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”) | |
| Path 26 (North or South) | |
| LCR Area (if any) | |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | |
| Run Hour Restrictions | |
| Delivery Period | |

| Month | Unit CAISO NQC (MW) | Unit Contract Quantity (MW) |
|-----------|---------------------|-----------------------------|
| January | | |
| February | | |
| March | | |
| April | | |
| May | | |
| June | | |
| July | | |
| August | | |
| September | | |
| October | | |
| November | | |
| December | | |

product information: ¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

| | |
|---|--|
| <i>Desert Quartzite, LLC</i> ("Seller") | CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer") |
| All Notices: Street: 15445 Innovation Drive City: San Diego, CA 92128 Attn: Devon Muto Phone: 858-442-4957 Facsimile: Email: Devon.Muto@edf-re.com | All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org |
| Reference Numbers: Duns: Federal Tax ID Number: | Reference Numbers: Duns: Federal Tax ID Number: |
| Invoices: Attn: Devon Muto Phone: 858-442-4957 Facsimile: E-mail: Devon.Muto@edf-re.com | Invoices: Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Scheduling: Attn: Phone: Facsimile: Email: | Scheduling: TBD Attn: Phone: Email: |
| Confirmations: Attn: Phone: Facsimile: Email: | Confirmations: Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org |
| Payments: Attn: Phone: Facsimile: E-mail: | Payments: Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org |
| Wire Transfer: BNK: [TBD] ABA: [TBD] ACCT: [TBD] | Wire Transfer: BNK: River City Bank ABA: 121-133-416 ACCT: XXXXXX8042 |

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

(2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Facility's SCADA device using Buyer's Remote Terminal Unit (RTU), and transfer data to the database server for the calculation, recording and archiving of data points.
 - (2) Communications. The RTU testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data.
 - (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
 - (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.
- (3) The CT procedures, as described within this Exhibit O, shall be applicable until the Grid Charging Effective Date. Prior to the Grid Charging Effective Date, all Charging Energy used to charge the Storage Facility during any CT shall exclusively be PV Energy from the solar Generating Facility. This Exhibit O shall be modified prior to the Grid Charging Effective Date, as mutually agreed upon by Buyer and Seller pursuant to Section 3.13 of this Agreement.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit

O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level (subject to derating solely caused by battery degradation, but in no event less than industry standard levels) at the Storage Facility Meter (MW) until the SOC reaches 100% or the stored energy reaches a level capable of discharging 600 MWh of Discharging Energy, not to exceed five (5) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

- (1) Time;
- (2) The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
- (3) Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
- (4) Stored Energy Level (MWh) and SOC (%).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) nearest the horizontal centerline of the Storage Facility; and
- (3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:

- (1) That the CT successfully started;
- (2) The maximum sustained discharging real power level for four (4) consecutive hours pursuant to A(1) above;
- (3) The amount of time during which the maximum charging real power level was sustained pursuant to A(2) above;

- (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging real power level registered during the CT (for purposes of calculating the ramp rate);
- (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging real power level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy; and
- (7) Amount of Discharging Energy and Energy Out to go from 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least 80% of one (1) Cycle in the 24-hour period prior to the beginning of the CT.
- (2) Abnormal Conditions. If abnormal operating or grid conditions (including low irradiance) occur prior to or during a CT that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- F. Incomplete Test. Except as provided in Part I(2)(4), if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects on a reasonable basis the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with modification and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

- (2) The total amount of Energy Out (as reported under Section II.D(7) above) divided by the total amount of Energy In (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("Energy In").
- (6) Discharge the Storage Facility until the stored energy level is equal to the amount of Energy necessary to discharge 600 MWh of Discharging Energy.
- (7) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (8) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the

Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Section III.A(7)(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

- (9) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (10) If the Storage Facility has not reached 0% SOC pursuant to Section III.A(7), continue discharging the Storage Facility until it reaches a 0% SOC.
- (11) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.
- (12) “Energy Out” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the commencement of discharging pursuant to Section III.A(5) until the Storage Facility has reached a 0% SOC pursuant to either Section III.A(7) or Section III.A(10), as applicable.
- (13) In order to determine an accurate Efficiency Rate during testing, the Storage Facility components will be operated in substantially the same manner as during normal Storage Facility operations, including, for example, that energy required for running auxiliary power such as HVAC units and control systems will be served by the existing feeder circuit that is used to charge and discharge energy, and no external power supply source (e.g., diesel generators or utility electric service) shall be permitted to serve such loads.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.
- (2) The resulting Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(12) above) divided by the total amount of Energy In (as reported under Section III.A(5) above), and expressed as a percentage, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test (only applicable after the Grid Charging Effective Date)

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
 - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

where:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{\text{A-B}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “**Available Effective Storage Capacity**”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters to (considering the conditions of the Storage Facility in total) receive Charging Energy from the Generating Facility (without double-counting any loss of Energy accounted for in variable B in the equation above) and deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the Effective Storage Capacity.

“**B**” is the “**PV Availability Adjustment Amount**”,

[REDACTED]

[REDACTED]

[REDACTED]

“Storage Capability” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged from the Generating Facility (calculated as the available battery capability (in MWh) to receive Charging Energy from the Generating Facility in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged to the Delivery Point (calculated as the available battery capability (in MWh) to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system battery racks in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system battery rack (based on actual operating conditions) that are able to receive Charging Energy from the Generating Facility and deliver Discharging Energy to the Delivery Point, but Storage Capability shall never exceed the Effective Storage Capacity x four (4) hours.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “Available Effective Storage Capacity”, “Storage Capability”, “PV Availability Adjustment Amount” and “Effective Maximum Charging Amount” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Facility for such Calculation Interval, or (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity”, “Storage Capability”, “PV Availability Adjustment Amount” and “Effective Maximum Charging Amount” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Facility Energy and the Generating Facility to provide Charging Energy, and exclude reasons at the high-voltage side of the Delivery Point or beyond. Any Calculation Interval in which the Storage Facility cannot receive all CAISO Dispatches shall be deemed an Unavailable Calculation Interval.

(c) Seller shall design the Storage Facility so that the final as-built stamped design drawings for the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 150 MW charging and 150 MW discharging at [REDACTED] degrees Celsius ([REDACTED] °C). If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example, a derate table for temperatures that exceed [REDACTED] degrees Celsius ([REDACTED] C).

(d) After [REDACTED] Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller

shall use commercially reasonable efforts to move any upcoming Planned Outages to such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller's commencement of Facility construction); *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| | |
|--|------------------------------|
| File Update Date: | [XX/XX/20XX] |
| Technology: | Lithium-ion battery storage |
| A. Contract Capacity | |
| Guaranteed Storage Capacity (MW): | 150 |
| Effective Storage Capacity (MW): | 150 |
| B. Total Unit Dispatchable Range Information | |
| Interconnect Voltage (kV) | 220 |
| Maximum Storage Level (MWh): (Energy capacity required to be stored in the Storage Facility net of all losses from the battery to the Delivery Point. This accounts for losses internal to the battery system, power conversion loss, Electrical Losses, Auxiliary Use, etc. The Plant EMS will report the maximum storage level as 100% SOC). | 611 MWh |
| Minimum Storage Level (MWh): (Minimum Energy level to which the Storage Facility may be instructed to be discharged; provided, 11 MWh are to be charged in the Storage Facility by sundown each day as reserve energy for self-serving Idle Period Auxiliary Use from sunset to sunrise. | 0 MWh |
| Stored energy capability (MWh): | 611 |

| | |
|---|---------------------|
| (Throughput obtained by cycling the battery from Maximum Storage Level to Minimum Storage Level) | |
| Maximum Discharge (MW): Discharge capability of the Storage Facility measured at the Point of Delivery | 150 |
| Maximum Charge (MW): Charge capability of the Storage Facility measured at the Storage Facility Meter | 150 |
| Guaranteed Efficiency Rate: | See Cover Sheet |
| Maximum Cycles / Contract Year: | █ |
| Maximum energy throughput (MWh/year) at the Point of Delivery: Calculated as Energy throughput of 1 full equivalent cycle times maximum cycles per contract year = 600 MWh * █. Any Idle Period Auxiliary Use does not count towards maximum energy throughput. | █ |
| Maximum daily energy throughput (MWh/day) at the Point of Delivery: Calculated as the energy throughput of █ full equivalent cycles times maximum allowed cycles per day = 600 * █. Any Idle Period Auxiliary Use does not count towards maximum energy throughput. | █ |
| C. Charge and Discharge Rates | |
| Mode | Maximum (MW) |
| Energy (Charge) | █ █ |
| Energy (Discharge) | █ |
| D. Ancillary Services | |
| Frequency regulation is included: | Yes |
| Spin is included: | Yes |

E. Additional Restrictions

1. The Storage Facility shall be charged exclusively with PV Energy unless the Parties mutually agree otherwise pursuant to Section 3.13 (excluding, for the avoidance of doubt, de minimis amounts of grid energy that may be used by Seller to serve Idle Period Auxiliary Use when Storage Facility energy is not available).
2. The sum of PV Energy plus Discharging Energy shall not exceed the Interconnection Capacity Limit.
3. Average Annual SOC of the Storage Facility in each Contract Year must be less than ■%.

EXHIBIT R

METERING DIAGRAM

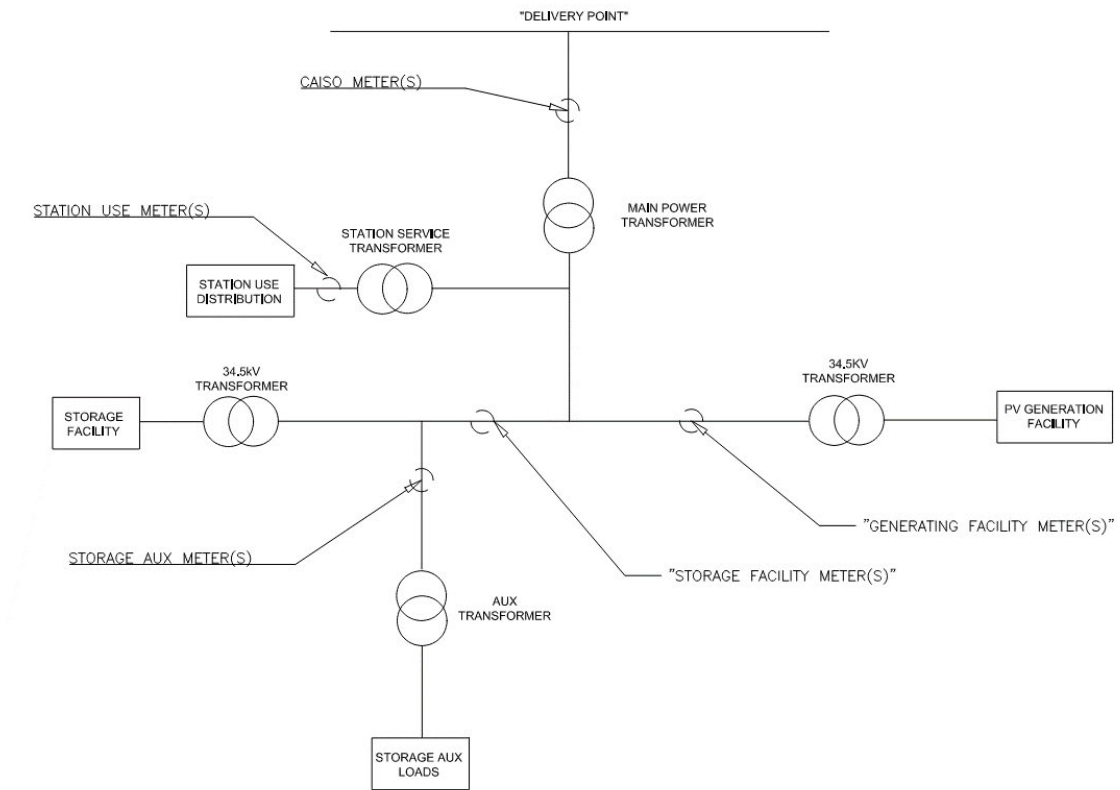


EXHIBIT S

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 pursuant to Section 1.1(b), 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

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. MICELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [\[Notice Section of the PPA\]](#) of the PPA, (b) if to Collateral Agent, to [\[Collateral Agent Name\]](#), [\[Collateral Agent Address\]](#), Attn: [\[Collateral Agent Contact Information\]](#), Telephone: [\[\]](#), Fax: [\[\]](#), and

(c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by

facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

| | | |
|--|--|---|
| <p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p> | | <p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p> |
| <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p> | | <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p> |
| | | |
| <p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i> By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p> | | |

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT T

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.

Buyer's requirements and expectations for Seller's supply chain are detailed below in this Supply Chain Code of Conduct ("**Supply Chain Code**"). Requirements of this Supply Chain Code may, in certain circumstances, exceed 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, reasonable 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 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.

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. Workers shall be compensated for overtime at pay rates greater than regular hourly rates if required by local laws. 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 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. Suppliers 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. In accordance with applicable law, 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.

EXHIBIT U
MATERIAL PERMITS

| <i>No.</i> | <i>Material Permits</i> |
|------------|-------------------------|
| 1 | [REDACTED] |
| 2 | [REDACTED] |
| 3 | [REDACTED] |
| 4 | [REDACTED] |
| 5* | [REDACTED] |
| 6* | [REDACTED] |
| 7 | [REDACTED] |
| 8 | [REDACTED] |
| 9 | [REDACTED] |
| 10 | [REDACTED] |
| 11 | [REDACTED] |
| 12 | [REDACTED] |
| 13 | [REDACTED] |
| 14 | [REDACTED] |

[REDACTED]

AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of [____], 2022 (the “**Amendment Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Desert Quartzite, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

RECITALS

- A. The Parties entered into that certain Renewable Power Purchase Agreement, dated as of September 3, 2021 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10, and Section 4 of Exhibit B, of the Agreement, Seller has provided notice of facts or circumstances resulting in significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (these facts or circumstances, with any other facts or circumstances satisfying the requirements of Article 10 and Section 4 of Exhibit B of the Agreement that Seller is aware of and could notice to Buyer as of the Amendment Effective Date, the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to the Development Cure Period Claims (including for potential liquidated damages for unexcused delays which might be owed by Seller to Buyer) by entering into this Amendment, on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. **Definitions.** Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. **Amendments to the Agreement.**
 - (a) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “March 1, 2024” is deleted and replaced with “March 1, 2025”.
 - (b) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “November 1, 2022” is deleted and replaced with “November 1, 2023”.

- (c) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

| Milestone | Expected Date for Completion |
|---|-------------------------------------|
| Expected Construction Start Date | ██████ |
| Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider) | 7/15/2024 |
| Initial Synchronization | 7/15/2024 |
| Expected Date of CAISO Commercial Operation | 11/15/2024 |
| Expected Commercial Operation Date | 2/1/2025 |

- (d) In the Delivery Term section of the Cover Sheet, the phrase “Fifteen (15) Contract Years” is deleted and replaced with “Twenty (20) Contract Years”.
- (e) The Delivery Term Expected Energy table on the Cover Sheet is amended to add additional rows for Contract Years 16-20 as follows:

| Contract Year | Expected Energy (MWh) |
|----------------------|------------------------------|
| 16 | ██████ |
| 17 | ██████ |
| 18 | ██████ |
| 19 | ██████ |

| | |
|----|--|
| 20 | |
|----|--|

- (f) The Guaranteed Efficiency Rate table on the Cover Sheet is amended to add additional rows for Contract Years 16-20 as follows:

| Contract Year | Guaranteed Efficiency Rate |
|---------------|----------------------------|
| 16 | |
| 17 | |
| 18 | |
| 19 | |
| 20 | |

- (g) The Contract Price tables on the Cover Sheet are replaced in their entirety with the following tables:

The Renewable Rate shall be:

| Contract Year | Renewable Rate |
|---------------|--------------------------------------|
| 1 – 20 | \$ /MWh (flat) with no escalation |

The Storage Rate shall be:

| Contract Year | Storage Rate |
|---------------|---|
| 1 – 20 | \$ /kW-mo. (flat) with no escalation |

- (h) A new Section is added to the Cover Sheet following the Contract Price tables as follows:

Assumed Tax Credit Rates: As of the Amendment Effective Date, the Parties have assumed for purposes of this Agreement that Seller would qualify for and utilize: (i) an ITC at thirty percent (30%) for the Storage Facility; and (ii) a PTC at \$0.027/kWh for the Generating Facility for the calendar year in which the Generating Facility is “placed in service” for federal income tax purposes (together, the “**Assumed Tax Credit Rates**”).

- (i) The following Definitions in Section 1.1 are replaced in their entirety or added as new defined terms as follows:

“Adjustment Date” means, with respect to the Generating Facility, either (a) if Seller elects to use ITC for the Generating Facility, the date on which the Generating Facility is “placed in service” for federal income tax purposes, or (b) if Seller elects to use PTC for the Generating Facility, the later of (i) the date on which the Generating Facility is “placed in service” for “federal income tax purposes” and (ii) the date on which Seller has substantially completed installation of Generating Facility equipment comprising 95% of the Guaranteed PV Capacity.

“Assumed Tax Credit Rates” has the meaning set forth on the Cover Sheet.

“Charging Energy” means all Energy delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility (including, for the avoidance of doubt, Auxiliary Uses during such charging).

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. A Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Deemed Delivered Energy Rate” has the meaning set forth in Section 4.4(b).

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy originating from such solar photovoltaic generating facility to the Storage Facility; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Grid Charging Effective Date” means the Amendment Effective Date.

“Property Tax Exclusion” means the “new construction” exclusion from California real property taxation under California Revenue and Taxation Code Section 73 or a similar Law.

“Renewable Rate” has the meaning set forth on the Cover Sheet; *provided*, if the last officer’s certificate provided by Seller pursuant to Section 2.2(l) states that:

(a) Seller will utilize the PTC for the Generating Facility and that the PTC rate stated in such officer’s certificate is higher than Seller’s Assumed Tax Credit Rate for the PTC, the Renewable Rate shall be reduced by \$ [REDACTED] /MWh for each \$0.0005/kWh that the PTC rate is above the Assumed Tax Credit Rate for the PTC, or

(b) Seller will utilize the ITC for the Generating Facility instead of the PTC, then (i) the Renewable Rate shall be increased [REDACTED] and (ii) if the ITC rate stated in such officer’s certificate is higher than [REDACTED] such Renewable Rate [REDACTED] shall be reduced by [REDACTED] by which such stated ITC rate [REDACTED]

“Storage Rate” has the meaning set forth on the Cover Sheet; *provided*,

(a) if the officer’s certificate provided by Seller pursuant to Section 2.2(l) states that the ITC rate for the Storage Facility is higher than Seller’s Assumed Tax Credit Rate for ITC, the Storage Rate shall be reduced by \$ [REDACTED] per kW-month for each one (1) percentage point that the new ITC rate is above the Assumed Tax Credit Rate for ITC; and

(b) if at any time during the term of the Agreement, Energy from the CAISO Grid is used as Charging Energy and the use of such Charging Energy (except to the extent caused by Seller) results in Seller losing more than twenty-five percent (25%) of the Property Tax Exclusion for the Storage Facility, then the Storage Rate shall be increased by an amount equal to \$ [REDACTED] per kW-month for each such one (1) percent increase in loss greater than twenty-five percent (25%), it being acknowledged and agreed that (i) any such Storage Rate increase shall be applied retroactively (and even after the Agreement may have been terminated) to the extent that the loss of a Property Tax Exclusion is applied retroactively by the applicable taxing Governmental Authority, so that this provision shall survive the termination of the Agreement, (ii) if there has been a Storage Rate increase pursuant to the foregoing provisions of this paragraph (b), and thereafter the use of energy from the CAISO Grid for Charging Energy is increased (except to the extent caused by Seller) and results in Seller losing additional Property Tax Exclusion, then the Storage Rate shall be increased further in accordance with the foregoing; *provided*, that (1) the cumulative increases to the Storage Rate pursuant to this paragraph (b) shall in no event increase the Storage Rate above \$ [REDACTED] per kW-month, and (2) Seller shall not be entitled to an increase to the Storage Rate under this paragraph due to use of CAISO Grid Energy for Charging Energy during any period following the expiration of the applicable statute of limitations date after which relevant taxing Governmental Authorities may no longer claim any reduction in the Property Tax Exclusion arising out of such use of CAISO Grid Energy during such period, and in no event shall any price increase be applicable to any month of the Delivery Term dating back more than three (3) years prior to the date of Notice from Seller informing Buyer of the loss of the Property Tax Exclusion.

(j) New Section 2.2(l) is added as follows:

(l) Seller has delivered to Buyer an officer's certificate stating:

(i) that, to the current actual knowledge of the officer executing such certificate, Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in a manner that would constitute an Event of Default by Seller under Section 2.3(b); and

(ii) whether Seller will utilize PTC or ITC for the Generating Facility, and the applicable PTC or ITC rate that would apply to the Generating Facility as of the date of such officer's certificate if the Generating Facility were "placed in service" for federal income tax purposes on the Adjustment Date; provided, if Seller's prior officer's certificate indicated it will utilize PTC for the Generating Facility, and the United States Internal Revenue Service provides any update to such PTC rate (i.e., to the rate for the calendar year in which the Adjustment Date occurs) after the date of such officer's certificate, Seller shall provide another officer's certificate informing Buyer of such updated PTC rate; provided further, that Seller may elect to use ITC (rather than PTC) for the Generating Facility only if (A) Seller in good faith determines, based on input from nationally recognized tax counsel, either that the Generating Facility is ineligible for PTC, or that there is material risk to Seller in qualifying for PTC for the Generating Facility at the same time as qualifying for ITC for the Storage Facility, and (B) Seller has sent written notice to Buyer prior to the Commercial Operation Date reasonably explaining the details of such Seller determination and within thirty (30) days following the date of such notice Buyer has not sent written notice back to Seller electing to terminate this Agreement, which termination right Buyer shall have upon any such ITC election (it being agreed that any such termination shall be no-fault and Buyer shall return to Seller all Development Security); and

(iii) the ITC rate Seller will utilize for the Storage Facility.

(k) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(l) Section 3.13 is replaced in its entirety with the following:

3.13 In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection

with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

(m) Section 4.4(b) is replaced in its entirety with the following:

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders. Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in an amount (such amount, converted to a dollar per MWh basis, the “**Deemed Delivered Energy Rate**”) equal to (i) the amount of Deemed Delivered Energy multiplied by the Renewable Rate, *plus* (if the officer’s certificate provided by Seller pursuant to Section 2.2(1)(ii) states that Seller will utilize PTC for the Generating Facility), (ii) (A) the amount of Deemed Delivered Energy multiplied by the PTC rate determined pursuant to Section 45(b)(2) of the United States Internal Revenue Code of 1986, as amended (the “**Code**”) as in effect for such Buyer Curtailment Period (and taking into account any then-applicable PTC rate increases under Section 45 of the Code), converted to a dollar per MWh basis, *divided by* (B) one (1) *minus* the highest then-applicable federal income tax rate applicable to Seller or its Affiliates or Lenders providing tax equity financing for the Generating Facility.

(n) Section 4.5(a) is replaced in its entirety with the following:

(a) Charging Generally. Buyer (or its Scheduling Coordinator) shall be responsible for Scheduling all Charging Energy. To the extent such Charging Energy is Scheduled, and upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy is supplied from PV Energy or directly from the CAISO Grid, and that as a result, even where Charging Energy originates as PV Energy, the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy which originated as PV Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(o) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(p) New Sections 4.10(i) and (j) are added as follows:

(i) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(j) Seller's obligations under Sections 3.10 and 4.10(i) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means all PV Energy, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(i) means efforts consistent with and subject to Section 3.12.

(q) Section 7.1(b) is replaced in its entirety with the following:

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, and (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, or if the automatic adjustments to Discharging Notices as set forth in the definition of Discharging Notice in this Agreement results in charges or penalties (other than UIE) or other adverse consequences to either Party, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld. Additionally, with respect to such automatic adjustments to Discharging Notices, until the Parties agree on an alternative approach, Buyer shall issue (or cause to be issued) all Discharging Notices in a manner that minimizes the need for any such automatic adjustments and Buyer shall be responsible for all CAISO charges, costs and penalties that result from Seller's compliance with any such automatic adjustment.

(r) In Section 10.4(a), the phrase "one hundred eighty (180)" is replaced by the phrase "one hundred twenty (120)".

(s) In the final paragraph of Section 4 of Exhibit B, the phrase "one hundred eighty (180)" is replaced by the phrase "one hundred twenty (120)" and the phrase "two hundred seventy (270)" is replaced by the phrase "two hundred ten (210)".

- (t) Section (a) of Exhibit C is replaced in its entirety with the following:

(a) Renewable Rate and Deemed Delivered Energy Rate. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus the Deemed Delivered Energy Rate (if applicable, and if not applicable, the Renewable Rate) for each MWh of Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

- (u) In Section 3 of Exhibit H, the following sentence is added to the end thereof: “The Storage Facility is physically capable of receiving Charging Energy that was generated by the Generating Facility, as well as Charging Energy from the CAISO Grid that was not generated by the Generating Facility.”

- (v) In Exhibit P, the definitions of “A”, “B” and “Storage Capability” are replaced in their entirety with the following:

“A” is the “**Available Effective Storage Capacity**”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters to (considering the conditions of the Storage Facility in total) receive Charging Energy (without double-counting any loss of Energy accounted for in variable B in the equation above) and deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the Effective Storage Capacity.

“B” is the “**PV Availability Adjustment Amount**”, which shall be calculated as the amount (if any) by which the (X) Effective Maximum Charging Amount in such Calculation Interval exceeds (Y) the sum of (i) the average rate of PV Energy deliveries in such Calculation Interval (expressed in MW) plus (ii) the average reduction to the rate of PV Energy deliveries in such Calculation Interval (expressed in MW) attributable to the sum of Deemed Delivered Energy and Lost Output in such Calculation Interval; *provided*, if the Storage Facility is (i) subject to a Discharging Notice in a Calculation Interval or (ii) capable of receiving Energy from the CAISO Grid for Charging Energy, “B” shall be deemed to equal zero for such Calculation Interval.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to receive Charging Energy (calculated as the available battery capability (in MWh) to receive Charging Energy in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged to the

Delivery Point (calculated as the available battery capability (in MWh) to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system battery racks in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system battery rack (based on actual operating conditions) that are able to receive Charging Energy and deliver Discharging Energy to the Delivery Point, but Storage Capability shall never exceed the Effective Storage Capacity x four (4) hours.

- (w) In the definition of “Losses” in Section 1.1, the following sentence is added to the end thereof: “In circumstances where Seller is a Non-Defaulting Party and if the officer’s certificate provided by Seller pursuant to Section 2.2(l)(ii) states that Seller will utilize PTC for the Generating Facility, the value of lost PTCs (if any) shall be included as “Losses” and such value shall be considered direct compensable damages, and not indirect or consequential damages.”
- (x) In Section 19.4, the following sentence is added to the end thereof: “Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that: (i) this Agreement is intended to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code, and (ii) neither Buyer nor any related entity operates the Facility for purposes of Section 7701(e)(4)(i) of the Code.”
- (y) The first sentence of Section 4.2(a) is replaced in its entirety with the following:

Title to all PV Energy shall pass and transfer from Seller to Buyer at the Generating Facility Metering Point.
- (z) New paragraphs are added between the first and second paragraphs of Section 11.6 as follows:

If the Agreement is terminated by Buyer prior to the Commercial Operation Date pursuant to Section 2.2(l)(ii)(B), neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such early termination date if either of the proposed rates applicable the Generating Facility or the Storage Facility is lower than the Renewable Rate or the Storage Rate (respectively) applicable hereunder as of such early termination date associated with the ITC and applicable ITC rate set forth in the officer’s certificate provided by Seller pursuant to Section 2.2(l), unless Seller first complies with the following provisions of this Section. If this Section applies based on the preceding sentence, then:

(a) if Seller proposes to utilize the ITC for financing some or all of the Generating Facility, Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; and

(b) if Seller proposes to utilize the PTC for financing some or all of the Generating Facility, then:

(1) if Seller or its Affiliate, as applicable, demonstrates to Buyer's reasonable satisfaction, that Seller was only able to utilize the PTC (i) after material costs to reconfigure the Facility or enter into or revise project-related agreements, or (ii) under financing terms materially more costly to Seller than were reasonably available to Seller as of the early termination date), then Seller shall first offer the Product to Buyer at the same prices (for both the Generating Facility and the Storage Facility) Seller then proposes to offer to third parties; or

(2) if preceding paragraph (1) does not apply, then Seller shall first offer the Product to Buyer at the same prices as would have been applicable under this Agreement prior to its early termination date (for both the Generating Facility and the Storage Facility) if Seller had elected to use PTC (rather than ITC) for the Generating Facility.

If this Section applies as a result of an Agreement termination under 2.2(l)(ii)(B), then upon Seller or Seller's Affiliates providing Buyer with a written offer to sell the Product on the terms and conditions materially similar to the terms and conditions contained in this Agreement (but at the applicable prices described above), if Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, Seller may transact with third parties.

(aa) Section I(E)(1) of Exhibit Q is deleted in its entirety.

3. Development Cure Period Claims. As of the Amendment Effective Date, all contractual rights, obligations, consequences, and disputes arising out of or relating to the Development Cure Period Claims are fully and finally terminated, resolved, and settled in accordance with the terms of this Amendment. For avoidance of doubt, (a) Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted as a consequence of any Development Cure Period Claims, and (b) Buyer acknowledges and agrees that the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller based on facts or circumstances occurring (i) before the Amended Effective Date that Seller was not aware of or could not notice to Buyer and (ii) on and after the Amendment Effective Date unless proximately caused by the events and circumstances giving rise to the Development Cure Period Claims. Seller represents and warrants as of the Amendment Effective Date that, except as set out on Attachment 1, neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Amendment Effective Date, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (f) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (g) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (h) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (i) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (j) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (k) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the date first written above.

“SELLER:”

DESERT QUARTZITE, LLC

By: _____

Printed Name:

Title:

“BUYER:”

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____

Printed Name:

Title:

ATTACHMENT 1

Development Cure Period Claims

1. The Anti-Circumvention Investigation initiated March 28, 2022 by the U.S. Department of Commerce, and the claims of resulting Import Restriction Actions and Import Restriction Delays, and their proximately-caused effect on Seller's ability and schedule to obtain photovoltaic modules for the Project.
2. Facts and circumstances relating to the COVID-19 pandemic arising prior to the Amendment Effective Date and their proximately-caused disruptions to global supply chains, including their effect on labor, materials, and equipment.
3. The Russian invasion of Ukraine and its proximately-caused disruption of supply chains and the availability of key commodities, including nickel and lithium carbonate impacting the availability of BESS equipment.