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
JUNE 2024 INTEGRATED RESOURCE PLAN PROCUREMENT DATA UPDATE
[PUBLIC VERSION]

Francis Choi
Assistant General Counsel
Clean Power Alliance of Southern California
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
Telephone: (213) 880-9934
E-mail: fchoi@cleanpoweralliance.org

June 3, 2024
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA’S
JUNE 2024 INTEGRATED RESOURCE PLAN PROCUREMENT DATA UPDATE
[PUBLIC VERSION]


I. INTEGRATED RESOURCE PLAN INCLUDED AS ATTACHMENTS TO THIS FILING

CPA is filing this pleading in Rulemaking 20-05-003 (“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 appreciates the Commission’s effort in this Rulemaking and for its review of CPA’s IRP Procurement Data Update.

Dated: June 3, 2024

Respectfully submitted,

/s/ Francis Choi

Francis Choi
Assistant General Counsel
Clean Power Alliance of Southern California
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
 Telephone: (213) 880-9934
E-mail: fchoi@cleanpoweralliance.org
Attachment A: CPA Verification
Verification

Consistent with the direction provided in Energy Division’s May 3, 2024 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 June 3, 2024, at Los Angeles, California.

Respectfully submitted,

/s/ Matthew Langer
Matthew Langer
Chief Operating Officer
Clean Power Alliance of Southern California
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
(213) 713-7012
mlanger@cleanpoweralliance.org
Attachment B: CPA RDTv3 and Supporting Documents [Public]

<table>
<thead>
<tr>
<th>can_charge_from_grid</th>
<th>total_generator_mw</th>
<th>contracted_generator_mw</th>
<th>total_storage_mw</th>
<th>contracted_storage_mw</th>
<th>solar_technology_type</th>
<th>storage_technology_type</th>
<th>total_storage_depth_mwh</th>
<th>contracted_storage_depth_mwh</th>
<th>viability_cod_reasonableness</th>
<th>viability_technical_feasibility</th>
<th>viability_financing</th>
<th>sitecontrol</th>
<th>resource_mix</th>
<th>3D1911016_vamo_ghfree</th>
</tr>
</thead>
<tbody>
<tr>
<td>NO</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>Solar</td>
<td>Solar</td>
<td>120</td>
<td>120</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>Solar</td>
<td>Solar</td>
<td>100</td>
<td>100</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>Solar</td>
<td>Solar</td>
<td>200</td>
<td>200</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>Solar</td>
<td>Solar</td>
<td>50</td>
<td>50</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>Solar</td>
<td>Solar</td>
<td>120</td>
<td>120</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>Solar</td>
<td>Solar</td>
<td>100</td>
<td>100</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>Solar</td>
<td>Solar</td>
<td>200</td>
<td>200</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>Solar</td>
<td>Solar</td>
<td>50</td>
<td>50</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>Solar</td>
<td>Solar</td>
<td>120</td>
<td>120</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>Solar</td>
<td>Solar</td>
<td>100</td>
<td>100</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>Solar</td>
<td>Solar</td>
<td>200</td>
<td>200</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>Solar</td>
<td>Solar</td>
<td>50</td>
<td>50</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>Solar</td>
<td>Solar</td>
<td>120</td>
<td>120</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>Solar</td>
<td>Solar</td>
<td>100</td>
<td>100</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>Solar</td>
<td>Solar</td>
<td>200</td>
<td>200</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>Solar</td>
<td>Solar</td>
<td>50</td>
<td>50</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>120</td>
<td>Solar</td>
<td>Solar</td>
<td>120</td>
<td>120</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>Solar</td>
<td>Solar</td>
<td>100</td>
<td>100</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>Solar</td>
<td>Solar</td>
<td>200</td>
<td>200</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>NO</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>Solar</td>
<td>Solar</td>
<td>50</td>
<td>50</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>123</td>
<td>123</td>
<td>123</td>
<td>123</td>
<td>Solar</td>
<td>Solar</td>
<td>123</td>
<td>123</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>65</td>
<td>65</td>
<td>65</td>
<td>65</td>
<td>Solar</td>
<td>Solar</td>
<td>65</td>
<td>65</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>Solar</td>
<td>Solar</td>
<td>300</td>
<td>300</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>Solar</td>
<td>Solar</td>
<td>93.5</td>
<td>93.5</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>Solar</td>
<td>Solar</td>
<td>64.9</td>
<td>64.9</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>Solar</td>
<td>Solar</td>
<td>300</td>
<td>300</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>Solar</td>
<td>Solar</td>
<td>93.5</td>
<td>93.5</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>Solar</td>
<td>Solar</td>
<td>64.9</td>
<td>64.9</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>Solar</td>
<td>Solar</td>
<td>300</td>
<td>300</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>93.5</td>
<td>Solar</td>
<td>Solar</td>
<td>93.5</td>
<td>93.5</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>64.9</td>
<td>Solar</td>
<td>Solar</td>
<td>64.9</td>
<td>64.9</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>YES</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>Solar</td>
<td>Solar</td>
<td>300</td>
<td>300</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>County</td>
<td>Supplier</td>
<td>County</td>
<td>Start Date Year</td>
<td>Start Date Month</td>
<td>Start Date Day</td>
<td>End Date Year</td>
<td>End Date Month</td>
<td>End Date Day</td>
<td>Notes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------</td>
<td>----------------</td>
<td>-----------------</td>
<td>------------------</td>
<td>----------------</td>
<td>---------------</td>
<td>----------------</td>
<td>--------------</td>
<td>-------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Riverside</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2022</td>
<td>8</td>
<td>21</td>
<td>2022</td>
<td>8</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Riverside</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2023</td>
<td>11</td>
<td>1</td>
<td>2023</td>
<td>11</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Riverside</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2022</td>
<td>3</td>
<td>20</td>
<td>2022</td>
<td>3</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2022</td>
<td>3</td>
<td>21</td>
<td>2022</td>
<td>3</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2023</td>
<td>1</td>
<td>17</td>
<td>2023</td>
<td>1</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2022</td>
<td>11</td>
<td>17</td>
<td>2022</td>
<td>11</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2023</td>
<td>12</td>
<td>8</td>
<td>2023</td>
<td>12</td>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2023</td>
<td>9</td>
<td>1</td>
<td>2023</td>
<td>9</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2023</td>
<td>12</td>
<td>31</td>
<td>2023</td>
<td>12</td>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>NEXTERA</td>
<td>Kern County</td>
<td>2024</td>
<td>26</td>
<td>26</td>
<td>2024</td>
<td>26</td>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>ORIGIS</td>
<td>Kern County</td>
<td>2024</td>
<td>1</td>
<td>31</td>
<td>2024</td>
<td>1</td>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kern</td>
<td>PIVOT ENERGY</td>
<td>Kern County</td>
<td>2024</td>
<td>12</td>
<td>31</td>
<td>2024</td>
<td>12</td>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>FERVO</td>
<td>Los Angeles County</td>
<td>2028</td>
<td>6</td>
<td>1</td>
<td>2028</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>GEYSERS POWER COMPANY</td>
<td>Lake County</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tulare</td>
<td>TERRA GEN</td>
<td>Kern County</td>
<td>2024</td>
<td>6</td>
<td>1</td>
<td>2024</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2024</td>
<td>9</td>
<td>10</td>
<td>2024</td>
<td>9</td>
<td>10</td>
<td>2024</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2024</td>
<td>12</td>
<td>31</td>
<td>2024</td>
<td>12</td>
<td>30</td>
<td>2024</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>2</td>
<td>1</td>
<td>2025</td>
<td>2</td>
<td>1</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>12</td>
<td>31</td>
<td>2025</td>
<td>12</td>
<td>30</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>8</td>
<td>26</td>
<td>2025</td>
<td>8</td>
<td>26</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>12</td>
<td>31</td>
<td>2025</td>
<td>12</td>
<td>30</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Los Angeles</td>
<td>PROLOGIS LABasin</td>
<td>CPA Advice Letter</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>2025</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Mexico</td>
<td>PATTERN</td>
<td>New Mexico</td>
<td>2026</td>
<td>10</td>
<td>31</td>
<td>2026</td>
<td>10</td>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>GEYSERS POWER COMPANY</td>
<td>Lake County</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>2026</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>PGE</td>
<td>PGE</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>NEXTERA</td>
<td>Riverside County</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PGE</td>
<td>PGE</td>
<td>PGE</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td>2027</td>
<td>6</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>contract_execution_date_year</td>
<td>contract_execution_date_month</td>
<td>contract_execution_date_day</td>
<td>ts_upgrades</td>
<td>ts_upgrades_date_year</td>
<td>ts_upgrades_date_month</td>
<td>ts_upgrades_date_day</td>
<td>ts_upgrades_description</td>
<td>0023560a核算点</td>
<td>0023560a</td>
<td>0023560a</td>
<td>0023560a</td>
<td>0023560a</td>
<td>0023560a</td>
<td>0023560a</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------------------------------</td>
<td>----------------------------</td>
<td>-------------</td>
<td>-----------------------</td>
<td>-----------------------</td>
<td>----------------------</td>
<td>------------------------</td>
<td>-----------------------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>10</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>20</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
<td>47</td>
</tr>
<tr>
<td>2008</td>
<td>4</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>10</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>31</td>
<td>31</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
<td>28</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>26</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>2</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>2</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>7</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>3</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>2</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>2008</td>
<td>10</td>
<td>1</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>general</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>previous_COD_year</td>
<td>previous_COD_month</td>
<td>previous_COD_day</td>
<td>remediation_plan</td>
<td>signed_contract</td>
<td>notice_to_proceed</td>
<td>public_contract</td>
<td>buying_energy_capacity</td>
<td>NEC_reserving_service</td>
<td>remedia tion_plan</td>
<td>signed_contract</td>
<td>notice_to_proceed</td>
<td>public_contract</td>
<td>buying_energy_capacity</td>
<td>NEC_reserving_service</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>----------------------</td>
<td>-------------------</td>
<td>----------------</td>
<td>------------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>2022</td>
<td>2</td>
<td>21</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2023</td>
<td>11</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2023</td>
<td>1</td>
<td>31</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2023</td>
<td>12</td>
<td>2</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2023</td>
<td>12</td>
<td>10</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2023</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2024</td>
<td>1</td>
<td>3</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2024</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2024</td>
<td>12</td>
<td>31</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2024</td>
<td>9</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2025</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>12</td>
<td>31</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2028</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2029</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2025</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2025</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>3</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>6</td>
<td>1</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>2026</td>
<td>10</td>
<td>31</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>26</td>
<td>NA</td>
<td>NA</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>26</td>
<td>NA</td>
<td>NA</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
<tr>
<td>26</td>
<td>NA</td>
<td>NA</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>EnergyCapacity</td>
<td>Calculated</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>YES</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Notes:**
- "YES" indicates that the milestone has been met.
- "NO" indicates that the milestone has not been met.
- "N/A" indicates that the milestone is not applicable.
- The dates are placeholders and do not represent real dates.
- "EnergyCapacity" refers to the energy capacity of the system.
- "RPS" refers to Renewable Portfolio Standard.
- "D" refers to a specific identification code or documentation.
- "Physical" refers to the physical location or infrastructure.
- "Original contract execution date" refers to the date the contract was signed.
- "33 MW of solar" refers to the capacity of solar energy.
- "Deepwater" refers to the storage capacity.
- "Biomass" refers to the biomass energy source.
- "8-hour duration storage" refers to the duration of storage capacity.
- "Biomass" refers to the biomass energy source.
ENERGY STORAGE AGREEMENT

COVER SHEET

**Seller:** Desert Sands Energy Storage II, LLC

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

**Description of Facility:** A 140 MW / 560 MWh battery energy storage system, located in Riverside County, California

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [x] Mitigated Neg Dec, [ ] EIR (provided CUP type subject to change)</td>
<td>June 1, 2025</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>January 1, 2027</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>January 1, 2027</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>April 1, 2027</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>June 1, 2027</td>
</tr>
</tbody>
</table>

**Delivery Term:** Twenty (20) Contract Years

**Guaranteed Capacity:** 140 MW of Installed Capacity at four (4) hours of continuous discharge
### Guaranteed Efficiency Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Construction Start Date:** March 1, 2026, 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.
Guaranteed Commercial Operation Date: June 1, 2027, 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.

Storage Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 20</td>
<td>$/kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>

Seller’s Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the ITC at forty percent (40%).

Product:

☒ Facility Energy
☒ Installed Capacity and Effective Capacity
☒ Ancillary Services
☒ Capacity Attributes

Anticipated Flexible Capacity: Amount: 140 (MW), subject to changes by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.)

Scheduling Coordinator: Buyer

Security Amount:

Development Security: $105/kW of Guaranteed Capacity
Performance Security: $105/kW of Installed Capacity

Guarantor: NextEra Energy Capital Holdings, Inc. (as of the Effective Date)
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DEFINITIONS</td>
<td>1</td>
</tr>
<tr>
<td>1.1</td>
<td>Contract Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td>Rules of Interpretation</td>
<td>22</td>
</tr>
<tr>
<td>2</td>
<td>TERM; CONDITIONS PRECEDENT</td>
<td>24</td>
</tr>
<tr>
<td>2.1</td>
<td>Contract Term</td>
<td>24</td>
</tr>
<tr>
<td>2.2</td>
<td>Conditions Precedent</td>
<td>24</td>
</tr>
<tr>
<td>2.3</td>
<td>Development; Construction; Progress Reports</td>
<td>25</td>
</tr>
<tr>
<td>2.4</td>
<td>Remedial Action Plan</td>
<td>26</td>
</tr>
<tr>
<td>2.5</td>
<td>Pre-Commercial Operation Actions</td>
<td>26</td>
</tr>
<tr>
<td>3</td>
<td>PURCHASE AND SALE</td>
<td>27</td>
</tr>
<tr>
<td>3.1</td>
<td>Product</td>
<td>27</td>
</tr>
<tr>
<td>3.2</td>
<td>Facility Energy</td>
<td>27</td>
</tr>
<tr>
<td>3.3</td>
<td>Ancillary Services</td>
<td>27</td>
</tr>
<tr>
<td>3.4</td>
<td>Capacity Attributes</td>
<td>27</td>
</tr>
<tr>
<td>3.5</td>
<td>Resource Adequacy Failure</td>
<td>28</td>
</tr>
<tr>
<td>3.6</td>
<td>Compliance Expenditure Cap</td>
<td>29</td>
</tr>
<tr>
<td>3.7</td>
<td>Facility Configuration</td>
<td>30</td>
</tr>
<tr>
<td>3.8</td>
<td>Ownership of Incentives</td>
<td>30</td>
</tr>
<tr>
<td>4</td>
<td>OBLIGATIONS AND DELIVERIES</td>
<td>30</td>
</tr>
<tr>
<td>4.1</td>
<td>Delivery</td>
<td>30</td>
</tr>
<tr>
<td>4.2</td>
<td>Station Use</td>
<td>31</td>
</tr>
<tr>
<td>4.3</td>
<td>Performance Guarantees; Ancillary Services</td>
<td>31</td>
</tr>
<tr>
<td>4.4</td>
<td>Facility Testing</td>
<td>32</td>
</tr>
<tr>
<td>4.5</td>
<td>Testing Costs and Revenues</td>
<td>33</td>
</tr>
<tr>
<td>4.6</td>
<td>Facility Operations</td>
<td>33</td>
</tr>
<tr>
<td>4.7</td>
<td>Dispatch Notices</td>
<td>34</td>
</tr>
<tr>
<td>4.8</td>
<td>[Intentionally Omitted]</td>
<td>34</td>
</tr>
<tr>
<td>4.9</td>
<td>Energy Management</td>
<td>34</td>
</tr>
<tr>
<td>4.10</td>
<td>Capacity Availability Notice</td>
<td>36</td>
</tr>
<tr>
<td>4.11</td>
<td>Outages</td>
<td>37</td>
</tr>
<tr>
<td>5</td>
<td>TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS</td>
<td>38</td>
</tr>
<tr>
<td>5.1</td>
<td>Allocation of Taxes and Charges</td>
<td>38</td>
</tr>
<tr>
<td>5.2</td>
<td>Cooperation</td>
<td>38</td>
</tr>
<tr>
<td>5.3</td>
<td>Environmental Costs</td>
<td>38</td>
</tr>
<tr>
<td>6</td>
<td>MAINTENANCE AND REPAIR OF THE FACILITY</td>
<td>39</td>
</tr>
<tr>
<td>6.1</td>
<td>Maintenance of the Facility</td>
<td>39</td>
</tr>
<tr>
<td>6.2</td>
<td>Maintenance of Health and Safety</td>
<td>39</td>
</tr>
<tr>
<td>6.3</td>
<td>Shared Facilities</td>
<td>39</td>
</tr>
</tbody>
</table>
ARTICLE 7 METERING ........................................................................................................... 40
  7.1 Metering ............................................................................................................. 40
  7.2 Meter Verification ............................................................................................................. 41
ARTICLE 8 INVOICING AND PAYMENT; CREDIT ............................................................ 41
  8.1 Invoicing .............................................................................................................. 41
  8.2 Payment ............................................................................................................. 41
  8.3 Books and Records ............................................................................................. 42
  8.4 Payment Adjustments; Billing Errors ................................................................. 42
  8.5 Billing Disputes ................................................................................................... 42
  8.6 Netting of Payments .......................................................................................... 43
  8.7 Seller’s Development Security ............................................................................ 43
  8.8 Seller’s Performance Security ............................................................................ 43
  8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral ............... 43
  8.10 Buyer’s Financial Statements ........................................................................ 44
ARTICLE 9 NOTICES .............................................................................................................. 44
  9.1 Addresses for the Delivery of Notices ................................................................. 44
  9.2 Acceptable Means of Delivering Notice ............................................................. 45
ARTICLE 10 FORCE MAJEURE ............................................................................................. 45
  10.1 Definition ............................................................................................................ 45
  10.2 No Liability If a Force Majeure Event Occurs ................................................... 46
  10.3 Notice ................................................................................................................... 46
  10.4 Termination Following Force Majeure Event or Development Cure Period ...... 46
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION ..................................................... 47
  11.1 Events of Default ................................................................................................. 47
  11.2 Remedies; Declaration of Early Termination Date ................................................ 50
  11.3 Damage Payment; Termination Payment ........................................................... 50
  11.4 Notice of Payment of Termination Payment or Damage Payment .................... 51
  11.5 Disputes With Respect to Termination Payment or Damage Payment ............ 52
  11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date ......................................................... 52
  11.7 Rights And Remedies Are Cumulative ............................................................... 52
  11.8 Mitigation ............................................................................................................ 52
  11.9 Seller Pre-COD Liability Limitations ................................................................. 52
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES ........ 53
  12.1 No Consequential Damages .............................................................................. 53
  12.2 Waiver and Exclusion of Other Damages ........................................................... 53
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY ................. 54
  13.1 Seller’s Representations and Warranties ............................................................. 54
  13.2 Buyer’s Representations and Warranties ............................................................ 55
  13.3 General Covenants ............................................................................................. 56
Exhibits:

Exhibit A  Facility Description
Exhibit B  Facility Construction and Commercial Operation
Exhibit C  Compensation
Exhibit D  Scheduling Coordinator Responsibilities
Exhibit E  Progress Reporting Form
Exhibit F-1 Form of Monthly Expected Available Effective Capacity Report
Exhibit F-2 Form of Monthly Expected Available Storage Capability Report
Exhibit G  Form of Daily Availability Notice
Exhibit H  Form of Commercial Operation Date Certificate
Exhibit I  Form of Capacity Test Certificate
Exhibit J  Form of Construction Start Date Certificate
Exhibit K  Form of Letter of Credit
Exhibit L  Intentionally Omitted
Exhibit M  Form of Replacement RA Notice
Exhibit N  Notices
Exhibit O  Capacity Tests
Exhibit P  Annual Capacity Availability Calculation
Exhibit Q  Operating Restrictions
Exhibit R  Metering Diagram
Exhibit S  Form of Guaranty
Exhibit T  Form of Consent to Collateral Assignment
Exhibit U  Supply Chain Code of Conduct
Exhibit V  Material Permits
Exhibit W  Force Majeure Event and/or Development Cure Period Claim Form
ENERGY STORAGE AGREEMENT

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

RECITALS

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

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

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility’s NQC will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions);

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 3.6(c).

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

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

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

“Ancillary Meter” has the meaning set forth in Section 7.1(a).

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Annual 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.

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

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

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Facility) within the Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the charging or discharging of the Facility; provided, if Seller demonstrates prior to Commercial Operation to Buyer’s reasonable satisfaction that Station Use is not reasonably likely to exceed Auxiliary Use by more than two percent (2%) in each month, “Auxiliary Use” and “Station Use” shall be deemed to be interchangeable for purposes of this Agreement.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.10 with respect to the Available Effective Capacity and Available Storage Capability, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).
“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 Capacity” has the meaning in Exhibit P.

“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 quotient (expressed as a decimal) of (a) the Charging Energy after reaching 100% SOC or the first five (5) hours of the charging phase of the applicable Capacity Test, as applicable, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“Battery Discharging Factor” means the quotient (expressed as a decimal) of (a) the Facility Energy after the first four (4) hours of the discharging phase of the applicable Capacity Test, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“BESS Equipment” means batteries, battery modules, onboard sensors, control components, inverters, transformers, or any of their components.

“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 Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.4(c).

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

“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 or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the 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-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(ii).

“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.

“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 charge or discharge 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 Availability Payment True-Up” has the meaning set forth in Exhibit C.

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

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

“Capacity Test” or “CT” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity or any other test conducted pursuant to Exhibit O.

“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) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

“Charging Energy” means all Energy delivered to the Delivery Point pursuant to a Charging Notice, as measured by the Facility Meter.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the 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 instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

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

“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 Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.6(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.6.

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

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

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

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Price” means the CPM Soft Offer Cap (or its successor).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(i).

“CPUC System RA Penalty” means the penalties for “System Procurement Deficiency” adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

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

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

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

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

“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 set forth in Section 11.3(a).

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

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

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

“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 specified for the Development Security on the Cover Sheet.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.
“Disclosing Party” has the meaning set forth in Section 18.2.

“Dispatch Notice” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Facility Energy at a specific MW level to a specified Stored Energy Level; provided, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff. Dispatch Notices may be communicated electronically (i.e. through ADS, AGC or e-mail), or telephonically, in accordance with the procedures set forth in Section 4.7. Telephonic or other verbal communications may be documented (either recorded by tape, electronically or in writing) without further notification to, or consent being required from, either Party with respect to such Party being recorded by the other, including by Buyer’s designated Scheduling Coordinator.

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“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.

“Efficiency Rate” means the rate calculated as the quotient of (a) the sum of (i) Facility Energy plus (ii) Idle Period Auxiliary Use for which Seller is required to reimburse Buyer, divided by (b) Energy In, based on actual Facility operations for each applicable month, adjusted to reflect the nearest Facility Energy and Energy In values that would have resulted in equal Stored Energy Levels at the beginning of the first Calculation Interval and the end of the last Calculation Interval of such month.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility associated with delivery of Charging Energy, and (b) between the Facility and the Delivery Point associated with delivery of Facility Energy.

“Emission Reduction Credits” or “ERCs” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain
future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

“Energy In” means the total Energy delivered by Buyer to the Delivery Point pursuant to one or more Charging Notices as measured at the Facility Meter (without adjusting for Electrical Losses or Station Use).

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

“Energy Out” means the total Energy delivered to the Delivery Point pursuant to one or more Discharging Notices during the relevant period as recorded by the CAISO.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

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

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

“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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice, as measured by the Facility Meter, net of Electrical Losses and Station Use. All Facility Energy shall have originally been delivered to the Facility as Charging Energy.

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

“FCDS Notice” has the meaning set forth in Section 2.1(b).

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

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

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

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

“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.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.
"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.

"Greenhouse Gas" or “GHG” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

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

"Guaranteed Capacity Availability” has the meaning set forth in Section 4.3.

"Guaranteed Commercial Operation Date” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"Guaranteed Construction Start Date” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

"Guarantor" means, with respect to Seller, any Person that (a)(i) is NextEra Energy Capital Holdings, Inc. (provided it is an Affiliate of Seller), or other third party reasonably acceptable to Buyer or (ii) has an Investment Grade Credit Rating, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) 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.

"High Operating Limit” or “HOL” means a real-time calculated number representing the instantaneous maximum power level at which the Facility can discharge Facility Energy to the Delivery Point, as communicated via the EMS.

"Idle Period Auxiliary Use” means Auxiliary Use consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice for which Seller does not pay retail rates to its retail electric utility provider.

"Imbalance Energy” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Facility Energy deviates from the amount of Scheduled Energy.
“Incentives” means: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 46, 48 and 48E 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; and (c) any other form of incentive relating in any way to the Facility that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) future environmental attributes (except to the extent related to the items which Seller is responsible for under Section 5.3 which shall be Incentives) or future energy attributes.

“Included Party” has the meaning set forth in Section 16.1(a).

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

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

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

“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 Interconnection Facilities that are used by the Facility 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 from the Facility to the Delivery Point under the Interconnection Agreement, in the amount of 140 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.
“Investment Grade Credit Rating” means a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s.

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

“ITC” means the investment tax credit established pursuant to Section 48 or 48E of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.


“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, having assets of at least $10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“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.

“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 Incentives.

“Low Operating Limit” or “LOL” means a real-time calculated number representing the instantaneous maximum power level at which the Facility can charge Energy to the Facility, as communicated via the EMS.

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

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

“Material Permits” means all permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to commence construction, as set forth on Exhibit V.

“Milestones” means the 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 Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.10(a).

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

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

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

“NEECH” has the meaning set forth in the definition of Affiliate.

“NEER” means NextEra Energy Resources, LLC.

“NEOP” has the meaning set forth in the definition of Affiliate.

“NEP” has the meaning set forth in the definition of Affiliate.

“NERC” means the North American Electric Reliability Corporation or any successor entity.

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

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

“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, next Business Day courier service, or electronic messaging (e-mail).

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

“Outage Management System” or “OMS” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

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

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

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

“Permitted Transfer” means each of the following transactions:

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

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

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

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

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

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

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NEP, NEOP and NEECH, and their respective direct or indirect subsidiaries.

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

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.11(a).

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

“PMIN” means the applicable CAISO-certified minimum operating level of the 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 Financing” means any tax equity or debt transactions entered into by an Affiliate of Seller that is secured only by a Portfolio.

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

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

“Production Tax Credits” or “PTCs” means production tax credit under Section 45 or 45 Y of the Internal Revenue Code as in effect from time-to-time throughout the Contract Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

“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 energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualified Operator” means Seller or an operator of energy storage facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery energy storage facilities having a nameplate capacity rating of ten (10) MW and/or two (20) MWh or more, for not less than two (2) years.

“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 as calculated in accordance with Section 3.5(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Plan” has the meaning set forth for “Resource Adequacy Plan” in the CAISO Tariff with respect to Buyer’s monthly or annual Resource Adequacy Benefits showings.

“RA Shortfall” means, for a given Showing Month, the positive difference, if any, expressed in kW, of (a) the product of (i) the Facility’s Qualifying Capacity minus (b) the sum of (i) the portion of the Net Qualifying Capacity of the Facility for such month which is able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC plus (ii) Replacement RA provided by Seller with respect to an expected shortfall in Resource Adequacy Benefits of the Facility for such Showing Month, if applicable.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any month shown on an RA Plan, commencing with the RA Plan for the Showing Month that includes the RA Guarantee Date (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility’s Resource Adequacy Benefits or any Replacement RA, if applicable), for which there is an RA Shortfall.

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

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

“Reimbursable Station Use” means all Station Use, except (a) to the extent Seller has been invoiced for such Station Use by the electric utility as retail energy, and (b) Auxiliary Use that is consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

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

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

“Replacement RA” means resource adequacy benefits equivalent to Resource Adequacy Benefits (including satisfying the same Slice-of-Day, battery energy storage system profile and related characteristics) 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, 20-06-031, 20-12-006, 21-06-029, 21-07-014, 22-03-034, 22-06-050, 22-12-028, 22-08-039, 23-04-010 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 Charging Energy or Facility 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.

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

“Seller Board Approval Deadline” has the meaning set forth in Section 2.1(c).

“Seller Initiated Test” has the meaning set forth in Section 4.4(c).

“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; provided, the Parties agree that the value of Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

“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 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 Stored Energy Level relative to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage. The “SOC” shall represent the range of Stored Energy Level reserved exclusively for Buyer’s use; provided, Seller may represent such range anywhere within the actual available capability of the Facility.

“SOD” or “Slice-of-Day” has the meaning set forth in the Resource Adequacy Rulings.

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

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

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

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

“Storage Capability” has the meaning in Exhibit P.

“Storage Rate” has the meaning set forth on the Cover Sheet; provided, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that the ITC rate for the Facility is higher than Seller’s assumed ITC rate as set forth on the Cover Sheet, the Storage Rate shall be reduced by per kW-mo. for each one (1) percentage point that the claimed ITC rate is above forty percent (40%); provided further, in the event of any reduction of the Storage Rate pursuant to the previous proviso, with respect to the first five (5) Contract Years, if the IRS rejects or reduces the claimed ITC applicable to the Facility above forty percent (40%) within the twelve (12)-month period following each such Contract Year, Buyer shall reimburse Seller the difference between such reduced payments for the immediately prior Contract Year (but not for any other prior Contract Years) through the date of such final adjustment by the IRS within thirty (30) days of Notice by Seller, and the Storage Rate shall immediately be modified to be based on the then-current ITC rate as approved by the IRS (but in no event higher than the original Storage Rate).

“Stored Energy Level” means, at a particular time, the amount of Energy in the Facility available to be discharged to the Delivery Point as Facility 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 ITC, PTC, and any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of clean or renewable energy and/or investments in clean or 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.

“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.


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

“Unplanned Outage” means a period during which the Facility is unavailable to provide some or all of the Product due to the need to maintain or repair a component of the Facility, which period is not a Planned Outage.

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, subject to Buyer’s obligations in Section 4.9(g), 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) Seller shall provide Notice to Buyer within ten (10) Business Days of Seller’s receipt of any notice from the CAISO of the results of any Deliverability Allocation Process informing Seller of the results of Seller’s application for Full Capacity Deliverability Status ("FCDS Notice"). Upon Buyer’s receipt of an FCDS Notice, Buyer shall have the right, in its sole discretion, to terminate this Agreement by providing Notice to Seller within sixty (60) days after Buyer’s receipt of the FCDS Notice.

(c) If Seller has not received all approvals of the management and board of directors (or equivalent governing body) of Seller and its Affiliates, including, if applicable, the approval of the board of directors of NextEra Energy, Inc. or a committee thereof, as Seller determines in its sole discretion are required under its and their respective constituting documents for the performance by Seller of its obligations under this Agreement ("Seller Board Approval"), on or before May 31, 2024 (the “Seller Board Approval Deadline”), then Seller may elect to terminate this Agreement by providing written notice of termination to Buyer within ten (10) Business Days after the Seller Board Approval Deadline. If this Agreement is terminated by Seller pursuant to this Section 2.1(c), then, within five (5) Business Days of the date of such notice of termination, Seller shall pay to Buyer an amount equal to [redacted] of the Development Security amount, which shall be Buyer’s sole and exclusive remedy associated with such failure to obtain the Seller Board Approval and related termination. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(d) and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date,
review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof as soon as reasonably practicable, but in any event within five (5) Business Days of receipt thereof:

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

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

(c) An Interconnection Agreement between Seller (or Seller’s Affiliate) 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; The Facility is providing Resource Adequacy Benefits for the month in which Delivery Term commences;

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

(h) Seller (with reasonable assistance from Buyer) has taken all actions and executed all documents and instruments to be performed and/or signed by Seller, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and Seller has taken the actions required by Seller under Section 2.6 and the CAISO Tariff in order for Buyer (or its designated agent) to be able to dispatch the Facility for the Commercial Operation Date;

(i) Seller has delivered to Buyer an officer’s certificate stating (i) that Seller has complied with Section 2.3(b), and (ii) the ITC rate which Seller claims will apply for the Facility; and

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

2.3 Development; Construction; Progress Reports.

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

(b) Seller shall use commercially reasonable efforts to ensure that all materials, products and components used in the batteries and inverters for the Facility (the “Major Equipment”) comply with the Supply Chain Code. Seller shall use commercially reasonable efforts to implement reasonable due diligence procedures to verify compliance by Seller, its Affiliates and its Major Equipment suppliers with the Supply Chain Code, and Seller shall promptly notify Buyer if Seller becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

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

2.5 Pre-Commercial Operation Actions. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. Seller shall give Buyer at least forty-five (45) days’ Notice before the Commercial Operation Date.
ARTICLE 3
PURCHASE AND SALE

3.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

3.2 Facility Energy. Except for Facility Energy resulting from a Seller Initiated Test, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services and Associated Ancillary Services Energy, with characteristics and quantities determined in accordance with the CAISO Tariff. Upon a request by Buyer, the Parties shall negotiate in good faith to modify the terms of this Agreement (which may include modification of the Storage Rate and/or other financial factors) for the Facility to be able to provide Black Start (as defined in the CAISO Tariff) or any other Ancillary Services not listed Exhibit Q.

3.4 Capacity Attributes. Seller shall diligently pursue 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 3.6, 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 3.6, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.6, 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 3.6, 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 an amount up to the expected RA Shortfall (ignoring the provision of Replacement RA for purposes of quantifying such “expected RA Shortfall”) with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.5 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as set forth in Section 3.5(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. The “RA Deficiency Amount” shall equal to the sum of the following (for which Buyer shall provide reasonable documentation):

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty (“CPUC-Penalized Shortfall”), Seller’s pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall (“CAISO-Penalized Shortfall”) Seller’s pro rata share of the amount of such CAISO costs, charges or penalties associated with the Facility RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any portion of the RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer purchased replacement Resource Adequacy Benefits, the amount of Buyer’s cost of such replacement Resource Adequacy Benefits, plus

(iv) For any portion of the RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the prevailing market value of such RA Shortfall, determined by Buyer in a commercially reasonable manner;
3.6 **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 with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the **Accepted Compliance Costs**), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.6(c) 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.

(e) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the change in Law, and (iii) with respect to Resource Adequacy, the Net Qualifying Capacity shall be adjusted downward to reflect the effect of the change in Law.

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

3.8 **Ownership of Incentives.** Seller shall have all right, title and interest in and to all Incentives. Buyer acknowledges that any Incentives belong to Seller. If any Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such 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 Incentives.

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 (except as otherwise set forth in this Agreement), if any, imposed in connection with: (a) the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and (b) the acceptance and transmission of Facility Energy at and from the Delivery Point, including without limitation, transmission costs and transmission line losses with regard to (a) and (b). The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D. To the extent Seller elects, or the Facility is required, to be a Scheduling Coordinator Metered Entity, in consideration of Buyer’s performance of its obligation to submit Settlement Quality
Meter Data for the Facility to CAISO in accordance with Exhibit D ("SQMD Reporting"), Seller shall pay or cause to be paid to Buyer Five Hundred Dollars ($500) each month for which Buyer provides SQMD Reporting ("Monthly SQMD Charge"). If (a) Seller elects to withdraw its SQMD Plan for the Facility and as a result Buyer no longer has an obligation to submit Settlement Quality Meter Data for the Facility to CAISO in accordance with Exhibit D, or (b) the Parties mutually agree in their sole discretion to allow a third party selected by Seller to submit such Settlement Quality Meter Data to CAISO, then as of the later of (i) the date Seller provides Notice of such election to Buyer, and (ii) the effective date that any such change is approved by the CAISO (to the extent required), Buyer shall no longer provide any such SQMD Reporting and the Monthly SQMD Charge will terminate.

4.2 Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) during charging and discharging of the Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use may be served by Charging Energy or Facility Energy, (b) 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 such Station Use) except for Auxiliary Use during periods of charging or discharging pursuant to a Charging Notice or Discharging Notice, (c) the supply of Auxiliary Use shall not be deemed a violation of this Agreement, including Sections 4.9(c), (d), and (f), and (d) Seller shall reimburse Buyer for all Reimbursable Station Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer (i.e. originally delivered as Charging Energy) is used by Seller for Station 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).

4.3 Performance Guarantees; Ancillary Services.

(a) During the period commencing upon CAISO Commercial Operation and continuing throughout the Delivery Term, the Facility shall maintain an Annual Capacity Availability during each Contract Year (and during the period from CAISO Commercial Operation through the Commercial Operation Date) of no less than [redacted] for each Contract Year (the “Guaranteed Capacity Availability”), which Annual Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. The Guaranteed Capacity Availability and Guaranteed Efficiency Rate are collectively the “Performance Guarantees”.

(c) Buyer’s remedies for Seller’s failure to achieve the Performance Guarantees are (i) the Monthly Capacity Payment adjustment and/or Capacity Availability Payment True-Up, as applicable, as set forth in Exhibit C, and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iii) with respect to the Guaranteed Capacity Availability, the applicable remedies set forth in Article 11.

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

\[(e)\]

Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 conducting such additional CAISO Certification.

4.4 **Facility Testing**

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

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

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

(iii) If Seller fails to conduct a Storage Capacity Test prior to the commencement of a Contract Year in accordance with Exhibit O, Buyer shall have the right, in its sole discretion, to retroactively apply, for all purposes of this Agreement, the results of the next Storage Capacity Test once completed back to the later of: (A) the first day of the applicable Contract Year, or (B) the date that is two (2) months prior to Buyer providing notice to Seller of such failure to conduct the applicable Storage Capacity Test.

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

(c) **Buyer or Seller Initiated Tests.** Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Tests, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed 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 Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a “Seller Initiated Test”.

(i) For any Seller Initiated Test other than a Capacity Test 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 Dispatch 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. The Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Facility during such Seller Initiated Test. The Facility will not be deemed unavailable during any Buyer Dispatched Test, except to the extent it is actually unavailable to perform the Buyer-instructed dispatches of the Facility during such Buyer Dispatched Test as would otherwise be determined under this Agreement.

4.5 Testing Costs and Revenues.

(a) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Facility and Buyer shall be entitled to all CAISO revenues associated with a 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 Charging Energy for such Seller Initiated Test, and (2) 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.

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

(c) If Buyer requests any additional Buyer Dispatched Test between annual Capacity Tests and the Effective Capacity resulting from such additional Capacity Test increases, or decreases by less than one percent (1%), from the then-current Effective Capacity, then Buyer shall either, in its sole discretion, [redacted].

(d) Except as set forth in Sections 4.5(a), (b) and (c), as applicable, all other costs of any testing of the Facility shall be borne by Seller.

4.6 Facility Operations.

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.
(b) Seller shall operate the Facility to automatically follow Automatic Generation Control such that the Facility can receive continuous instruction on a 4-second basis.

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(b) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement. Subject to the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If an electronic submittal is not possible for reasons beyond Buyer’s control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the CAISO Tariff.

4.8 **[Intentionally Omitted]**

4.9 **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 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 Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer will have the right to charge the 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 CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.
(c) **No Unauthorized Charging.** Seller shall not charge the 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 Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the 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 4.9(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and other benefits (including Product) associated with such discharge.

(d) **No Unauthorized Discharging.** Seller shall not discharge the 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. Buyer shall have the right to discharge the 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. 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) **Unauthorized Charges and Discharges.** If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder or as expressly addressed in Section 4.9(f), 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 the failure to implement such procedures shall be an Event of Default under Article 11.

(f) **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 4.9 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties (including Imbalance Energy charges) resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)), except to the extent such deviation is due to incorrect information received from the CAISO or a CAISO Dispatch that conflicts with the Operating Restrictions or the Master File. To the extent the Facility is unable to respond to ADS signals during any Calculation Interval (except to the extent caused by the CAISO), 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.
(g) 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 charge and discharge the Facility (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the 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 Facility testing shall be for Seller’s account. Upon CAISO Commercial Operation, Buyer or its designated SC shall be the Scheduling Coordinator for the Facility, and 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 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.

(h) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the operational procedures.

4.10 Capacity Availability Notice.

(a) 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 Available Effective Capacity, and (ii) Available Storage Capability, for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable (“Monthly Forecast”).

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Effective Capacity that the Facility is expected to have for each hour of such schedule day (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) (the “Availability Notice”). Seller shall provide Availability Notices (including updated Availability Notices) in a mutually agreeable form, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Effective Capacity of the Facility (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) changes or is expected to change after Buyer’s
receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer’s reasonable requests for changes in the time of delivery of Availability Notices.

4.11 Outages.

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“Outage Schedule”) for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned Outage. Seller may propose changes to any previously Planned Outage fifteen (15) days prior to such Planned Outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer’s receipt thereof, in Buyer’s sole discretion but consistent with Prudent Operating Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO. Seller shall communicate to Buyer all changes to a Planned Outage and estimated time of return of the Facility as soon as practicable after the condition causing the change becomes known to Seller.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.11(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 use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.11(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(b) No Planned Outages During Summer Months. Except as scheduled by the Parties under Section 4.11(a)(ii), no outages 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 or required to maintain equipment warranties that could not be scheduled outside such months. 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.

(c) Notice of Unplanned Outages. Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.
(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection, Buyer shall be responsible for having provided commercially reasonable insurance for such Buyer personnel, and shall not interfere with work on or operation of the Facility.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.

**ARTICLE 5**

**TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS**

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 **Environmental Costs.** Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and
All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller:

ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility.

(a) 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 applicable Law and Prudent Operating Practices relating to the operation and maintenance of the Facility. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer’s scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

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, including through shared ownership of, or possessing contractual right from, an Affiliate that is the interconnection customer under the Interconnection Agreement or the owner of any Shared Facilities and Interconnection Facilities; 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 ID, and (iv) provide that in the event of any discretionary allocation of curtailment that is not
specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.

ARTICLE 7
METERING

7.1 Metering.

(a) Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter (i) all Station Use and (ii) to the extent Station Use is expected to be, on average over any month, more than 2% greater than Auxiliary Use, all Auxiliary Use using one or more revenue-grade meters (collectively, the “Ancillary Meter”). The Facility Meter and Ancillary Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter(s) will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller’s sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the 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, as may be revised to be consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters and/or Ancillary Meter, as applicable, 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 Facility Meter and Ancillary Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan. 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, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan.

(b) Section 7.1(a) is based on the Parties’ mutual understanding as of the Effective Date that (i) the CAISO requires the Facility Meter to be programmed for Electrical
Losses as set forth in the definition of Electrical Losses in this Agreement and (ii) 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) or (ii) 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 Facility Meter malfunction, or upon Buyer’s reasonable request, Seller shall test the Facility 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 Facility 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 Facility 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 Facility 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; 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 reflect (a) 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 Charging Energy, Reimbursable Station Use and the amount of Facility Energy, in each case as read by the Facility Meter, Energy In, Energy Out, and the amount of Replacement RA delivered to Buyer (if any) 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 of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day.
Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and 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. Subject to this Section 8.7 and the other terms of this Agreement governing Seller’s Development Security requirements, Seller may change the type and/or issuer (as applicable) of the Development Security from time to time and at any time. For avoidance of doubt, Seller shall have no replenishment obligation with respect to the 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 of Guaranty 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) 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); provided, in no event shall Seller have any obligation to replenish the Performance Security to the extent that the total aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds two (2) times the amount of the original Performance Security. Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Subject to this Section 8.8 and the other terms of this Agreement governing Seller’s Performance Security requirements, Seller may change the type and/or issuer (as applicable) of the Performance Security from time to time and at any time.

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’s Financial Statements.** From the Effective Date, unless such financial statements are available on the internet at https://www.cleanpoweralliance.org/, if requested in writing by Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of the end of each quarter, and audited annual financial statements within one hundred eighty (180) days after the end of each fiscal year. Buyer’s financial statements shall have been prepared in accordance with GAAP, provided that Buyer’s quarterly budget-to-actual reports are not prepared in accordance with GAAP. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

**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 next Business Day 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 the claiming Party; *provided*, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

(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 asflooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, pandemic or plague; landslide; mudslide; sabotage or vandalism; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; 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 Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v)
Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after the date the claiming Party became (or reasonably should have become) aware of the claimed Force Majeure Event, must (a) give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit W, (b) provide information reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) 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 provide Notice within such fourteen (14)-day period constitutes a waiver of the Force Majeure Event with respect to the period starting the date after such Notice is due, and continuing until the date that the Notice is provided.

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) plus the payment of Commercial Operation Delay Damages equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays but for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(c) and 11.6, and Buyer shall
promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its 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(d) 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 3.5, and (B) failures related to the Annual Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P), (C) failures related to the Annual Capacity Availability or Guaranteed Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.3) and (D) failures related to the timely provision of Settlement Quality Meter Data consistent with the SQMD Plan, the exclusive remedies for which are set forth in the last sentence of Exhibit D, Section (i), 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 discharged by the Facility;

(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 Contract Year, the year-to-date Annual Capacity Availability multiplied by the Effective Capacity for the applicable period is less than seventy percent (70%) multiplied by the Installed Capacity, and Seller fails to (x) deliver to Buyer within thirty (30) 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 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 (unless the cure plan requires: (i) replacement of at least fifty percent (50%) of the battery capacity; (ii) replacement of at least fifty percent (50%) of the inverter capacity or sub-inverter capacity; and/or (iii) replacement of the generator step-up transformer (the GSU), in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a “Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

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

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

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

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

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

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

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

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

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

(vi) 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;

(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;
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

the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

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 equal to the Development Security amount plus, if the Development Security is posted as cash, any interest accrued thereon. If Seller has not paid the Damage Payment, and the amount of Development Security held by Buyer is not equal to the Damage Payment amount, then Buyer may liquidate the Development Security and the remainder of the Damage Payment shall be immediately due and payable to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the
Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

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

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

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

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 3.5, 11.2, 11.3 AND 11.9, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF
THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

(b) Seller has the power and authority to enter into and, subject to the Seller Board Approval, perform this Agreement and is not prohibited from entering into this Agreement or, subject to the Seller Board Approval, 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, subject to the Seller Board Approval, 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) Seller reasonably believes that, despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer’s only remedy for any breach of this representation by Seller shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays.

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 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. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with the requirements of this Section 13.4; provided, a Seller’s officer’s certificate certifying Seller’s full compliance with the requirements of this Section 13.4 shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence.

13.5 **Disadvantaged Communities Development.** Within thirty (30) days after the Effective Date, Seller shall pay to Buyer one hundred fifty thousand dollars ($150,000) for Buyer to use for community benefits as determined by Buyer in its sole discretion.
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 (if applicable), or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

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

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

(a) the assignee is a Permitted Transferee;

(b) Seller gives Buyer Notice of such transfer or assignment within fifteen (15) Business Days before the date of such proposed transfer or assignment; and

(c) 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 Permitted Transfers by Seller. Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such Permitted Transfer.

14.5 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.

14.6 Buyer Financing Assignment. Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“Buyer Assignee”) at any time upon not less than fifteen (15) Business Days’ notice by delivering Notice of such assignment, which notice must include a proposed assignment agreement (the “Limited Assignment Agreement”), the form of which Limited Assignment Agreement the Parties will work together in good faith to agree upon if/when Buyer in good faith believes the Facility may qualify for a municipal prepayment financing transaction and provides a Notice to Seller requesting that the Parties work together with respect to the preparation and agreement to such a form, which form shall be subject to the provisions set forth in the remainder of this Section 14.6 unless otherwise agreed to in writing by each of the Parties. 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 (the “Required Credit Rating”). As reasonably requested by each of Buyer Assignee and Seller, each shall (i) provide the other with information and documentation with respect to it, including but not limited to 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 in the case of Seller, account opening information and information related to the forecasting requirements set forth in this Agreement; and (ii) Seller shall 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 14.6 and the form of the Limited Assignment Agreement; provided, (i) nothing in the Assignment Agreement shall modify any provision of this Agreement; (ii) PPA Buyer remains obligated to perform all its obligations under this Agreement notwithstanding the limited assignment under the Assignment Agreement (including without limitation any such obligations not timely performed by Buyer Assignee under the Assignment Agreement) and any failure by Buyer Assignee to make payments to Seller when due under the Agreement shall be a Buyer Event of Default if not cured within the applicable cure period specified herein; (iii) the Assignment Agreement shall not purport to convey or otherwise allege any right of Buyer or Buyer Assignee to make any prepayment to Seller under this Agreement or to file or impose any lien on the Facility; (iv) neither Limited Assignee nor Buyer shall make any assignment of its rights or delegation of its obligations under the Assignment Agreement without the prior written consent of Seller; (v) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties; (vi) Buyer shall reimburse Seller for all out-of-pocket expenses reasonably incurred by Seller in excess of five thousand dollars ($5,000) (but not to exceed ten thousand dollars ($10,000) of reimbursable expenses) as a result of such assignment by Buyer; and (vii) Buyer Assignee and PPA Buyer shall comply with all reasonable requests from any Lender in
connection with the Limited Assignment Agreement, including in connection with any Consent to Collateral Assignment Agreement.

14.7 [Intentionally Omitted].

14.8 Accommodation of Tax Equity Investors. Buyer will, as soon as reasonably practicable after request, cooperate reasonably with Seller and any tax equity investor of Seller or a parent of Seller involving the Facility or this Agreement to provide such consents to assignments, estoppels, certifications, representations, information or other documents as may be reasonably requested by Seller or such tax equity investor in connection with any financing or assignment involving the Facility or this Agreement.

ARTICLE 15
DISPUTE RESOLUTION

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

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.4 Venue. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

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

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

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

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Ten Million Dollars ($10,000,000) per
occurance, and an annual aggregate of not less than Ten Million Dollars ($10,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000) per occurrence and in aggregate. 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. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(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) Builder’s All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder’s all-risk insurance covering the Facility during such construction periods.

(f) Property Damage Insurance. Seller shall maintain or cause to be maintained during the Delivery Term, property damage insurance with a policy limit of not less than the full replacement cost of the Facility on a per occurrence basis.

(g) Pollution Liability Insurance. Seller shall maintain or cause to be maintained during the Contract Term, pollution liability insurance in an amount not less than Two Million Dollars ($2,000,000) each occurrence covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from any subcontractor’s performance or lack of performance of work under this Agreement, or might be required by federal, state, regional, municipal, and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. If such coverage is on a “claims made” policy form, any applicable “retroactive date” shall be no later than the Effective Date and shall be maintained for at least two (2) years beyond the termination of this Agreement, to allow for a reasonable extended reporting period.

(h) 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 (h)(i) and (h)(iii). All subcontractors shall provide a primary endorsement and
and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) 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.

(j) Failure to Comply with Insurance Requirements. If Seller fails to comply
with any of the provisions of this Article 17, Seller, among other things and without restricting
Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer
and self-insure in accordance with the terms and conditions above. With respect to the required
general liability, umbrella liability and business automobile liability insurance, Seller shall provide
a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective
officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response
to a third-party claim in the same manner that an insurer would have, had the insurance been
maintained in accordance with the terms and conditions set forth above. In addition, alleged
violations of the provisions of this Article 17 means that Seller has the initial burden of proof
regarding any legal justification for refusing or withholding coverage and Seller shall face the
same liability and damages as an insurer for wrongfully refusing or withholding coverage in
accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “Confidential
Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller
including: (a) the terms and conditions of, and proposals and negotiations related to, this
Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as
“confidential” or “proprietary” before disclosing it to the other. Confidential Information does not
include (i) information that was publicly available at the time of the disclosure, other than as a
result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available
through no fault of the recipient after the time of the delivery; (iii) information that was rightfully
in the possession of the recipient (without confidential or proprietary restriction) at the time of
delivery or that becomes available to the recipient from a source not subject to any restriction
against disclosing such information to the recipient; and (iv) information that the recipient
independently developed without a violation of this Agreement.
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 (including bona fide prospective 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. Notwithstanding the foregoing, and for clarification purposes, the Parties acknowledge that Buyer and on or more Affiliates of Seller are parties to separate power purchase agreements, for different facilities, and this Agreement is separate and distinct from those other agreements, and nothing in this Agreement shall have any effect on, including without limitation for collateral estoppel, admission, waiver, or any other purpose, those other agreements or any issues within those other agreements. Similarly, to the extent of any open issues under those other agreements, each of the Parties to this Agreement expressly reserves and retains its rights with respect to such open issues under this Agreement. 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
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.

DESSERT SANDS ENERGY STORAGE II, LLC
By: ____________________________
Name: __________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Desert Sands Energy Storage II

Site includes all or some of the following APNs: 668280017, 668280007, 668270016, 668270018, 668270019*

City: Palm Springs

County: Riverside

Zip Code: 92258

Latitude and Longitude: 33.9238, -116.5786

Facility Description: A standalone battery energy storage facility with a net nameplate capacity of 140 MW / 560 MWh located in the City of Palm Springs within Riverside County, California. The Facility is a portion of a larger 300 MW (mixed 4-hour and 8-hour) energy complex (i.e., the Facility comprises 140 MW/300 MW of the energy complex). Seller may install additional inverter capacity to account for production and delivery losses.

Delivery Point: The P-node for the Facility (as defined below)

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: To be established prior to the Commercial Operation Date at the Devers 220 kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Southern California Edison

Additional Information: None

* Seller represents the APNs identified above are sufficient for Seller to build the Facility. Seller may add additional APNs without the consent of Buyer.
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


(a) “Construction Start” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors, and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, beginning of either the excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Subject to the other terms of this Agreement, Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) Seller may extend the Guaranteed Construction Start Date (in addition to any extensions pursuant to a Development Cure Period) 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 (which may have already been extended due to a Development Cure Period, or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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 Seller achieves Commercial Operation after 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), but in fewer days than the number of days by which Seller missed the Guaranteed

Exhibit B - 1
Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), then Buyer shall refund to Seller an amount equal to fifty percent (50%) of the Daily Delay Damages for the difference between (i) the number of days by which Seller missed the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), minus (ii) the number of days by which Seller missed 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 any Development Cure Period). For illustrative purposes only, if Seller misses the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period) by ten (10) days, but only misses the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but accounting for any extensions to such date pursuant to any Development Cure Period) by four (4) days, then Buyer shall refund to Seller an amount equal to fifty percent (50%) of six (6) days’ worth of Daily Delay Damages.

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) Subject to the other terms of this Agreement, 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) In addition to any extensions pursuant to any Development Cure Period, 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 (which may have already been extended due to a Development Cure Period or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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 (subject, however, to Buyer’s and/or Seller’s ability to terminate this Agreement in accordance with the provisions of Section 10.4(a)).

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, both be extended on a day-for-day basis (the “Development Cure Period”) (provided, the Guaranteed Construction Start Date shall not be adjusted retroactively if the Construction Start Date has already occurred) 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 including commercially reasonable efforts to make up time from any such delays; provided, Seller shall not be entitled to more than one (1) day of Development Cure Period delay for a single day on which more than one of the conditions in (a)-(c) below occur concurrently:

(a) Seller has not acquired (i) the conditional use permit by the Expected Construction Start Date, or (ii) all other Material Permits within sixty (60) days following the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

(b) a Force Majeure Event occurs; or

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

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

Seller shall submit any claim for Development Cure Period delays (x) within five (5) Business Days of (i) missing the applicable milestone date in the case of Sections 4(a) or (c) above or (ii) Seller becoming aware of the delays pursuant to Section 4(d) above, (y) concurrently with Seller’s claim of a Force Majeure Event in the case of (b) above, and (z) within fourteen (14) days after Seller becomes aware of any ; provided, Seller’s failure to submit such Development Cure Period claim within such applicable period constitutes a waiver of such Development Cure Period starting the date after such notice is due, and continuing until the date that the submission is provided in substantially the form set forth in Exhibit W; provided further, Seller shall be entitled to revise any such claim to, among other things, reflect additional days of Development Cure Period which occur after the submission of any such claims. Notwithstanding anything in

Exhibit B - 3
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 (i) one hundred eighty (180) days with respect to the Guaranteed Construction Start Date, and (ii) one hundred eighty (180) days with respect to the Guaranteed Commercial Operation Date, 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) with respect to the Guaranteed Commercial Operation Date (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. 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, subject to the limitation set forth in Section 11.9.
EXHIBIT C

COMPENSATION

(a) Monthly Compensation.

(i) Each month from the period commencing upon CAISO Commercial Operation and continuing throughout 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 one thousand (1,000) x Effective Capacity x Efficiency Rate Factor minus an amount equal to Buyer’s monthly average cost for Charging Energy multiplied by the total number of MWhs of Reimbursable Station Use in such month, divided by the Efficiency Rate. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective 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) x .5]

(C) If the Efficiency Rate is less than 75%, then:

Efficiency Rate Factor = 0

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

"Capacity Availability Payment True-Up Amount" means an amount equal to \( A \times B - C - D \), where:

\[
A = \text{The sum of the year-to-date Monthly Capacity Payments}
\]

\[
B = \text{The Capacity Availability Factor}
\]

\[
C = \text{The sum of any Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year (or for the period from CAISO Commercial Operation through the Commercial Operation Date)}.
\]

"Capacity Availability Factor" means:

(i) If the product of \((A)\) the YTD Annual Capacity Availability \(\times (B)\) the Effective Capacity is equal to or greater than the product of \((C)\) the Guaranteed Capacity Availability \(\times (D)\) the Effective Capacity, then:

\[
\text{Capacity Availability Factor} = 0
\]

(ii) If the product of \((A)\) the YTD Annual Capacity Availability \(\times (B)\) the Effective Capacity is less than the product of \((C)\) the Guaranteed Capacity Availability \(\times (D)\) the Effective Capacity, but the product of \((X)\) the sum of (1) the YTD Annual Capacity Availability plus (2) Force Majeure Unavailability, \(\times (Y)\) the Effective Capacity is greater than or equal to seventy percent (70%) of the Installed Capacity, then:

\[
\text{Capacity Availability Factor} = \text{Guaranteed Capacity Availability} - \text{YTD Annual Capacity Availability}
\]

(iii) If the product of \((A)\) the sum of (1) the YTD Annual Capacity Availability plus (2) Force Majeure Unavailability, \(\times (B)\) the Effective Capacity is less than seventy percent (70%) of the Installed Capacity, then:

\[
\text{Capacity Availability Factor} = (\text{Guaranteed Capacity Availability} - \text{YTD Annual Capacity Availability}) \times 1.5 - (\text{Force Majeure Unavailability} \times 0.5)
\]

Exhibit C - 2
provided, if the result of any of the calculations in clauses (i) through (iii) 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.

(b) Tax Credits. The Parties agree that except as set forth in the definition of the term “Storage Rate”, the following sentences of this subsection (c) shall apply. The Parties agree that the Storage Rate is not 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. Buyer shall reimburse Seller within thirty (30) days of Notice from Seller any reimbursement amounts owed by Buyer to Seller as set forth in the definition of Storage Rate.
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 Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 costs and penalties (including associated with Imbalance Energy costs) resulting from any deviations from Charging Notices or Discharging Notices or otherwise charging or discharging the Facility when not subject to a Charging Notice or Discharging Notice, or any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement 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). Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability

Exhibit D - 1
Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

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

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

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

(g) Master Data File and Resource Data Template. The Parties will cooperate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master Data File. 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 at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC’s Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall
change such data without the other Party’s prior written consent. At least once per Contract Year, Seller shall cooperate with Buyer to review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) and CPUC’s Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information and any additional supporting documentation to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

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

(i) **SQMD Reporting.** If Seller elects to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan, Seller shall provide or cause to be provided to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, Settlement Quality Meter Data no later than six (6) Business Days after the relevant flow date. In connection with any SQMD Plan or designation of the Facility as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller in the SQMD Plan submission and approval process and perform the obligations required by the SQMD Plan or the CAISO applicable to Scheduling Coordinators with respect to submitting Settlement Quality Meter Data to the CAISO including without limitation submitting required affirmations and attestations (if any). Buyer (as Scheduling Coordinator) shall be responsible for submitting Settlement Quality Meter Data to the CAISO using the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer as a result of Seller’s failure to provide or have provided Settlement Quality Meter Data consistent with the SQMD Plan to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator), with respect to the Facility Meters within the timeframe required by this Section (i).
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1
FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE 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 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 29 |     |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |     |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |     |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

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 AVAILABLE STORAGE CAPABILITY REPORT

[Stored Energy 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

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: ______________________

Station: ______________________    Issued By: ______________________

Unit: ______________________    Issued At: ______________________

Unit 100% Available No Restrictions: ______________________

<table>
<thead>
<tr>
<th>Hour Ending</th>
<th>Available Effective Capacity</th>
<th>Available Storage Capability</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(MW)</td>
<td>(MWh)</td>
<td></td>
</tr>
<tr>
<td>1:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0:00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments: ______________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

______________________________________________________________________

Exhibit G - 1
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 Energy Storage Agreement dated _______ ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

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

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

3. The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

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 of the Facility 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 (and, if applicable pursuant to the Agreement, Auxiliary 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.

8. The Facility and its meters have been designed and installed in a manner such that all Energy used for Station Use (and, if applicable pursuant to the Agreement, Auxiliary Use) within the Facility is metered, and there is no material Station Use within the Facility (other than Auxiliary Use) that is served by Energy from the Facility.

9. The temperature derate curve for the Facility inverters associated with the Installed Capacity is rated for a temperature derate beginning at [__]° C.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

Exhibit H - 1
this ______ day of ____________, 20__. 

[LICENSED PROFESSIONAL ENGINEER] 

By: ______________________________ 

Its: ______________________________ 

Date: _____________________________
EXHIBIT I

FORM OF CAPACITY TEST CERTIFICATE

This certification (“Certification”) of Capacity Test results 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 Energy Storage 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 that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, all 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 Energy Storage Agreement dated ____________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

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

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

____________________________________________________________________

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

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

[SELLER ENTITY]

By: ________________________________

Its: ________________________________

Date: ______________________________

Exhibit J - 1
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXX] (United States Dollars [XXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage 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 officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite
documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with 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 Practice 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 the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles,
CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Energy Storage 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

INTENTIONALLY OMITTED
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 Energy Storage 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 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

<table>
<thead>
<tr>
<th>Unit Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>CAISO Resource ID</td>
<td></td>
</tr>
<tr>
<td>Unit SID</td>
<td></td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td></td>
</tr>
<tr>
<td>Resource Type</td>
<td></td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
<td></td>
</tr>
<tr>
<td>Path 26 (North or South)</td>
<td></td>
</tr>
<tr>
<td>LCR Area (if any)</td>
<td></td>
</tr>
<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td></td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td></td>
</tr>
<tr>
<td>Delivery Period</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Exhibit M - 1
[SELLER ENTITY]

By: ____________________________

Its: ____________________________

Date: ____________________________
# EXHIBIT N

## NOTICES

<table>
<thead>
<tr>
<th>Desert Sands Energy Storage II, LLC (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
</tbody>
</table>
| Street: 700 Universe Blvd.  
City: Juno Beach, FL 33408  
Attn: Business Management  
Phone: (561) 691-2816  
Facsimile:  
Email: dl-bmo-west-caiso@nexteraenergy.com | Street: 801 S Grand, Suite 400  
City: Los Angeles, CA 90017  
Attn: Chief Executive Officer  
Phone: (213) 269-5870  
E-mail: tbardacke@cleanpoweralliance.org |
| **Reference Numbers:** | **Reference Numbers:** |
| Duns:  
Federal Tax ID Number: | Duns:  
Federal Tax ID Number: |
| **Invoices:** | **Invoices:** |
| Attn: Business Management  
Phone: (561) 691-2816  
Facsimile:  
E-mail: dl-bmo-west-caiso@nexteraenergy.com | Attn: CPA Settlements  
Phone: (213) 269-5870  
E-mail: settlements@cleanpoweralliance.org |
| **Scheduling:** [TBD] | **Scheduling:** |
| Attn:  
Phone:  
Facsimile:  
Email: | Attn: Day Ahead Scheduling  
Phone: (817) 303-1104  
Email: TenaskaComm@tnsk.com |
| **Confirmations:** [TBD] | **Confirmations:** |
| Attn:  
Phone:  
Facsimile:  
Email: | Attn: Vice President, Power Supply  
Email:energycontracts@cleanpoweralliance.org |
| **Payments:** | **Payments:** |
| Attn: Business Management  
Phone: (561) 691-2816  
Facsimile:  
E-mail: dl-bmo-west-caiso@nexteraenergy.com | Attn: Vice President, Power Supply  
E-mail: settlements@cleanpoweralliance.org |

Exhibit N - 1
<table>
<thead>
<tr>
<th>Desert Sands Energy Storage II, LLC (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td>BNK: [TBD]</td>
<td>BNK: River City Bank</td>
</tr>
<tr>
<td>ABA: [TBD]</td>
<td>ABA: 121133416</td>
</tr>
<tr>
<td>ACCT: [TBD]</td>
<td>ACCT: XXXXXXX8042</td>
</tr>
</tbody>
</table>
EXHIBIT O

CAPACITY TESTS

Capacity Test Notice and Frequency

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

B. Subsequent Capacity Tests. Following the Commercial Operation 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 Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity has varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any 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 Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) determined pursuant to such Capacity Test shall become the new Effective Capacity at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment 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 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 Seller’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.

**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 Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

   (1) Electrical output at the lesser of maximum discharging level (MW) and Guaranteed Capacity for four (4) continuous hours; and

   (2) Electrical input at maximum charging level at the 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 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 and recorded simultaneously for the Facility, at six (6) second intervals:

   (1) Time;

   (2) The amount of Facility Energy;

   (3) The amount of Charging Energy;

   (4) The amount of Station Use;

   (5) 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 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 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 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 to go from 0% SOC to 100% SOC;
7. Amount of Facility Energy to go from 100% SOC to 0% SOC.

E. **Test Conditions.**

1. **General.** At all times during a CT, the 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 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 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 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, followed by a completed Capacity Test Certificate unless a Capacity Test Certificate is waived by Buyer pursuant to Section 4.5(c). Such 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.

Seller’s CT report shall be deemed invalid if not delivered to Buyer within five (5) Business Days after the completion of any CT. Within five (5) Business Days after receipt of the latter of such report or, as applicable, such Capacity Test Certificate, 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 conducting the first Commercial Operation Capacity Test, 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 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.

Exhibit O - 4
approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity. The Effective Capacity shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the four (4) hours of maximum sustained discharge pursuant to Section D(2) above (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity Test

• Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Command a real power charge that results in an AC power of Facility’s maximum charging level, and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging.

(5) Record and store the Charging Energy, which shall be used to determine the Battery Charging Factor.

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the lesser of (i) the Facility’s maximum discharging level and (ii) the Guaranteed Capacity, 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 Facility has reached 0% SOC, or (c) the sustained discharging level is at least five percent (5%) less than the lesser of (i) the maximum discharging level and (ii) the Guaranteed Capacity for more than five (5) consecutive minutes.

(7) Record and store the SOC after four (4) hours of continuous discharging. If the Facility SOC remains above zero percent (0%) after discharging at a
rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation 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 Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity and the Battery Discharging Factor.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC. Record and store the additional Facility Energy, if applicable.

- **Test Results**
  
  (1) The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

**B. AGC Discharge Test**

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Facility’s maximum discharging level within 25 seconds.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**
  
  (1) Record the Facility active power level at the Facility Meter.
  
  (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
  
  (3) Record and store the Facility active power response (in seconds).

- **System end state:** The Facility will be in the on-line state and at a commanded active power level of 0 MW.

**C. AGC Charge Test**

- **Purpose:** This test will demonstrate the AGC charge capability to achieve the Facility’s full charging level within 25 seconds.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**
  
  (1) Record the Facility active power level at the Facility Meter.
(2) Command the Facility to follow a simulated CAISO RIG signal of \(-P_{\text{max}}\) at .95 power factor for ten (10) minutes.

(3) Record and store the 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.

D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  
  1. Record the Facility reactive power level at the Facility Meter.
  2. Command the Facility to follow ___ 46 MVAR for ten (10) minutes.
  3. Record and store the Facility reactive power response.

- System end state: The 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 facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  
  1. Record the Facility reactive power level at the Facility Meter.
  2. Command the Facility to follow ___46 MVAR for ten (10) minutes.
  3. Record and store the Facility reactive power response.

System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the period commencing upon CAISO Commercial Operation and continuing throughout the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Capacity Availability” for the current Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date) using the formula set forth below:

\[
\text{Annual Capacity Availability} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}
\]

“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.

\[
\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \min\left(\frac{A}{\text{Effective Capacity}}, \frac{B}{\text{Effective Capacity} \times 4 \text{ hrs}}\right)\right)
\]

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date), where for each Calculation Interval:

“A” is the “Available Effective Capacity”, which shall equal the greater of the HOL and the absolute value of the LOL, considering the conditions of the Facility in total to receive Charging Energy from and deliver Facility Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Capacity.

“B” is the “Available Storage Capability”, which shall be calculated as 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 Facility is available to be charged (calculated as the available battery capability (in MWh) to receive Charging Energy from the Delivery Point 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 Facility is available to be discharged to the Delivery Point (calculated as the available battery discharging capability (in MWh) to deliver Facility Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharge Factor).
Discharging Factor). In calculating Available 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) that are able (considering the conditions of the Facility in total) to receive Charging Energy from and deliver Facility Energy to the Delivery Point, but Available Storage Capability shall never exceed the Effective Capacity x four (4) hours.

“Total YTD Calculation Intervals” means, for each applicable Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date), 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 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 Facility for such Calculation Interval, such that available Effective Capacity is calculated as set forth in the definition above, and available Storage Capability is calculated as the product of (A) the count of available system cells, multiplied by (B) the capability, in MWh, expected from each system cell under normal operating conditions pursuant to the manufacturer’s guidelines, and (ii) the amounts reported by Seller’s most recent Availability Notice (as updated pursuant to Section 4.10), which, with respect to the Available Effective Capacity, shall be calculated as the average of the “Gen Max” and “Load Max” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval, and with respect to the Available Storage Capability, shall be calculated as “Max Energy” minus “Min Energy” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval and for which calculation the Battery Charging Factor and Battery Discharging Factor shall not be applied, provided that any such revised Availability Notice indicating an increase in the Facility’s availability for the applicable Calculation Interval is submitted by Seller at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market. Except as otherwise expressly provided in this Agreement, the calculations of Available Effective Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Facility to charge or discharge Energy between the Facility and the Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). Any Calculation Interval in which the Facility fails to maintain connectivity to the CAISO (except to the extent caused by the CAISO) such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval; provided, if such failure to maintain connectivity only affects the availability of Ancillary Services and not Energy, then such Calculation Interval shall be deemed an Unavailable Calculation Interval on account of such failure only to the extent set forth in Section 4.3(d); provided further, any such Calculation Interval shall not be deemed an Unavailable Calculation Interval if the Facility responds with respect to such
Calculation Interval as directed by Buyer, Buyer’s Scheduling Coordinator or the CAISO via telephone, email, or some other means.

(c) If the total rated power of the Facility inverters is less than the Installed Capacity charging and discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval in a commercially reasonable manner consistent with Prudent Operating Practice.
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 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 Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

<table>
<thead>
<tr>
<th>File Update Date:</th>
<th>[XX/XX/20XX]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology:</td>
<td>Lithium Ion Batteries</td>
</tr>
<tr>
<td>Storage Unit Name:</td>
<td>Desert Sands Energy Storage II</td>
</tr>
</tbody>
</table>

A. Contract Capacity

| Guaranteed Capacity (MW): | 140 |
| Effective Capacity (MW):  | 140 |

B. Total Unit Dispatchable Range Information

| Interconnect Voltage (kV) | 220 |
| Maximum Storage Level (MWh): | 560 |
| Minimum Storage Level (MWh): | 0 |
| Stored energy capability (MWh): | 560 |
| Maximum Discharge (MW): | 140 |
| Maximum Charge (MW): | 140 |
| Guaranteed Efficiency Rate: | As set forth on the Cover Sheet |
| Maximum energy throughput (Discharged MWh/year)*: | 204,400 (365 cycles) |

[*Any Reimbursable Station Use does not count towards maximum energy throughput.]

C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
<td>140</td>
<td></td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>140</td>
<td></td>
</tr>
</tbody>
</table>

D. Ancillary Services

| Frequency regulation is included: | Yes |
| Spin is included:                 | Yes |

1. 

Exhibit Q - 1
[NTD: Seller to provide preliminary metering diagram, subject to SQMD plan update]
To be updated by Seller prior to Commercial Operation Date
EXHIBIT S
FORM OF GUARANTY

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

Recitals

A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“Seller”), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “ESA”) dated as of [____], 2023.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESA, as required by Section 8.8 of the ESA.

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 ESA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

Agreement

1. Guaranty. For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESA, 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 ESA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following
its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the ESA. 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 ESA, 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 ESA 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 ESA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESA, or
   (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to
the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESA, 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 ESA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller;

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

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

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor’s ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor’s parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days
after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at [___]
Attn: [___]

If delivered to Guarantor, to it at [___]
Attn: [___]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the ESA is assigned in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. **WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

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

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTENDED 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:

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By: ____________________________

Printed Name:__________________

Title:__________________________

BUYER:

[_______]

By: ____________________________

Printed Name:__________________

Title:__________________________

By: ____________________________

Printed Name:__________________

Title:__________________________
EXHIBIT T

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) [NextEra Entity], a Delaware limited liability company (the “Project Company”), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESA (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] (“ESA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the ESA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the ESA (collectively, the “ESA 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 otherthings, 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 ESA 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 ESA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties
hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

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

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

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the ESA, CPA is authorized to act in accordance with Collateral Agent’s instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent under such situation 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 ESA, or upon the occurrence or non-occurrence of any event or condition under the ESA 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 ESA (a “ESA Default”), CPA will not terminate or suspend its performance under the ESA until it first gives written notice of such ESA Default to Collateral Agent and affords Collateral Agent the right to cure such ESA Default within the applicable cure period under the ESA, which cure period shall run concurrently with that afforded Project Company under the ESA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the ESA of Collateral Agent’s intention to cure such ESA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESA Default) and is diligently proceeding to cure such ESA Default, notwithstanding the applicable cure period under the ESA, Collateral Agent shall have a period of sixty (60) days (or, if such ESA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the ESA other than to provide ESA Collateral, thirty (30) days, or, if such ESA Default is for failure by Project Company to provide ESA Collateral, ten (10)
Business Days) from the Collateral Agent’s receipt of the notice of such ESA Default from CPA to
cure such ESA Default; provided, (a) if possession of the Facility is necessary to cure any such non-
monetary ESA Default and Collateral Agent has commenced foreclosure proceedings within sixty
(60) days after notice of the ESA 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 ESA Default, to complete such proceedings and cure such ESA Default, and (b) if
Collateral Agent is prohibited from curing any such ESA 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 ESA 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 ESA 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 ESA, and, subject to Sections 1.7(b) and 1.7(c) below,
CPA and Substitute Owner will recognize each other as counterparties under the ESA 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 ESA in favor of each
other in accordance with the terms thereof; provided, before CPA is required to recognize the
Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction
that the Substitute Owner meets the qualifications of a Permitted Transferee under the ESA (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 ESA 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 ESA is terminated, rejected or otherwise invalidated as a result of any
bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its
owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession
of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of
foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement
Owner to, enter into a new agreement with one another for the balance of the obligations under the
ESA remaining to be performed having terms substantially the same as the terms of the ESA with
respect to the remaining Contract Term (“Replacement ESA”); provided, before CPA is required to
enter into a Replacement ESA, the Replacement Owner must have demonstrated to CPA’s reasonable
request.
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 ESA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESA, CPA may suspend performance of its obligations under such Replacement ESA, unless and until all ESA Defaults of Project Company under the ESA or Replacement ESA have been cured.

1.6 Transfer.

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

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESA or Replacement ESA, as applicable, including posting and collateral assignment of the ESA Collateral. Upon such assignment and the cure of any outstanding ESA Default, and payment of all other amounts due and payable to CPA in respect of the ESA or such Replacement ESA, the transferor shall be released from any further liability under the ESA or Replacement ESA, 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 ESA, including posting and collateral assignment of the ESA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESA 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 ESA, 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 ESA, Collateral Agent shall not have any personal liability to CPA under the ESA or Replacement ESA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the ESA, a Replacement ESA or the ESA 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 ESA relating to (a) a ESA Default by Project Company under the ESA, (b) any claim regarding a Force Majeure Event by CPA under the ESA, (c) any notice of dispute under the ESA, (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 ESA 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 ESA (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 ESA 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 ESA. 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 ESA is entered into or the ESA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the ESA, 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 ESA (b) terminate or suspend its performance under the ESA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESA

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 ESA 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 ESA 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 ESA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESA.

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 ESA, 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 ESA 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 ESA 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 ESA is in full force and effect, has been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitutes 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 ESA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESA; (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 ESA; and (d) the ESA 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 ESA, except as previously disclosed in writing and consented to by CPA.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESA, 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 ESA 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 under the ESA; (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 ESA; (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 ESA; and (d) the ESA 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 ESA.

**SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT**

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

5.1 **Authorization.**

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

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

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).
SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESA (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 ESA] of the ESA, (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 ESA. 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 ESA or any Replacement ESA, its obligations under such ESA or Replacement ESA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict
between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<table>
<thead>
<tr>
<th>[NEXTERA ENTITY], a Delaware limited liability company.</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: [Name] [Title] Date:__</td>
<td>By: [Name] [Title] Date:__</td>
</tr>
<tr>
<td>[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent].</td>
<td></td>
</tr>
<tr>
<td>By: [Name] [Title] Date:__</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
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 with respect to any Major Equipment are set forth in Sections 1 – 8 below (“Supply Chain Code”).

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 any work-related facility in addition to unreasonable restrictions on entering or exiting work-related 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 Major Equipment or BOP Services. 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 of Major Equipment 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 of Major Equipment shall ensure appropriate support and training is provided to all student workers. In the absence of local law, the wage rate for
student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

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

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

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

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

7. **Freedom of Association**
   In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.
8. **Restricted Jurisdictions**
   No Major Equipment may include any components or materials mined, manufactured or produced in the Xinjiang Uyghur Autonomous Region of China.
## EXHIBIT V

### MATERIAL PERMITS

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Conditional Use Permit (including modifications)</td>
</tr>
</tbody>
</table>
EXHIBIT W

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

__________________________________________________________

Seller: [Name]  Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

__________________________________________________________

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.

- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.

- Project schedule and/or GANTT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: 

Name: 

Title: 

Date: 

Exhibit W - 2
ENERGY STORAGE AGREEMENT

COVER SHEET

**Seller:** ESCA-PLD-CPA1, LLC

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

**Description of Facility:** A 300 MW / 1,200 MWh standalone lithium-ion battery storage project

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR</td>
<td>10/01/2025</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>01/31/2024</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>03/01/2027</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>02/01/2027</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>04/01/2027</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>06/01/2027</td>
</tr>
</tbody>
</table>

**Delivery Term:** Twenty (20) Contract Years

**Guaranteed Capacity:** Three hundred (300) MW of Installed Capacity at four (4) hours of continuous discharge

**REDACTED**
Guaranteed Efficiency Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Construction Start Date:** September 1, 2026

**Guaranteed Commercial Operation Date:** June 1, 2027
**Storage Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 20 kW-mo. (flat) with no escalation</td>
<td></td>
</tr>
</tbody>
</table>

**Seller’s Assumed ITC:** As of the Effective Date, Seller intends to qualify for and utilize the ITC at thirty percent (30%).

**Product:**

- Facility Energy
- Installed Capacity and Effective Capacity
- Ancillary Services
- Capacity Attributes

**Anticipated Flexible Capacity:** Amount: 300 MW

**Scheduling Coordinator:** Buyer

**Security Amount:**

Development Security: $105/kW of Guaranteed Capacity

Performance Security: $105/kW of Installed Capacity
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1 DEFINITIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Contract Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 2 TERM; CONDITIONS PRECEDENT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Contract Term</td>
<td>21</td>
</tr>
<tr>
<td>2.2 Conditions Precedent</td>
<td>21</td>
</tr>
<tr>
<td>2.3 Development; Construction; Progress Reports</td>
<td>22</td>
</tr>
<tr>
<td>2.4 Remedial Action Plan</td>
<td>23</td>
</tr>
<tr>
<td>2.5 Pre-Commercial Operation Actions</td>
<td>23</td>
</tr>
<tr>
<td>2.6 Termination for Interconnection Costs/Delay</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 3 PURCHASE AND SALE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Product</td>
<td>24</td>
</tr>
<tr>
<td>3.2 Facility Energy</td>
<td>25</td>
</tr>
<tr>
<td>3.3 Ancillary Services</td>
<td>25</td>
</tr>
<tr>
<td>3.4 Capacity Attributes</td>
<td>25</td>
</tr>
<tr>
<td>3.5 Resource Adequacy Failure</td>
<td>26</td>
</tr>
<tr>
<td>3.6 Compliance Expenditure Cap</td>
<td>26</td>
</tr>
<tr>
<td>3.7 Facility Configuration</td>
<td>27</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 4 OBLIGATIONS AND DELIVERIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Delivery</td>
<td>27</td>
</tr>
<tr>
<td>4.2 Station Use</td>
<td>27</td>
</tr>
<tr>
<td>4.3 Performance Guarantees; Ancillary Services</td>
<td>28</td>
</tr>
<tr>
<td>4.4 Facility Testing</td>
<td>29</td>
</tr>
<tr>
<td>4.5 Testing Costs and Revenues</td>
<td>30</td>
</tr>
<tr>
<td>4.6 Facility Operations</td>
<td>30</td>
</tr>
<tr>
<td>4.7 Dispatch Notices</td>
<td>31</td>
</tr>
<tr>
<td>4.8 [Intentionally Omitted]</td>
<td>31</td>
</tr>
<tr>
<td>4.9 Energy Management</td>
<td>31</td>
</tr>
<tr>
<td>4.10 Capacity Availability Notice</td>
<td>33</td>
</tr>
<tr>
<td>4.11 Outages</td>
<td>33</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Allocation of Taxes and Charges</td>
<td>35</td>
</tr>
<tr>
<td>5.2 Cooperation</td>
<td>35</td>
</tr>
<tr>
<td>5.3 Environmental Costs</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 Maintenance of the Facility</td>
<td>36</td>
</tr>
<tr>
<td>6.2 Maintenance of Health and Safety</td>
<td>36</td>
</tr>
<tr>
<td>6.3 Shared Facilities</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 7 METERING</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>37</td>
</tr>
</tbody>
</table>
ARTICLE 14
14.1 General Prohibition on Assignments ................................................................. 52
14.2 Collateral Assignment .................................................................................... 53
14.3 Permitted Assignment by Seller ...................................................................... 53
14.4 Shared Facilities; Portfolio Financing ............................................................. 53

ARTICLE 15
15.1 Governing Law ............................................................................................... 53
15.2 Dispute Resolution ......................................................................................... 53
15.3 Attorneys’ Fees .............................................................................................. 54
15.4 Venue .............................................................................................................. 54

ARTICLE 16
16.1 Indemnification .............................................................................................. 54
16.2 Claims .............................................................................................................. 54

ARTICLE 17
17.1 Insurance ........................................................................................................ 55

ARTICLE 18
18.1 Definition of Confidential Information .......................................................... 57
18.2 Duty to Maintain Confidentiality ................................................................. 57
18.3 Irreparable Injury; Remedies ......................................................................... 58
18.4 Further Permitted Disclosure ........................................................................ 58
18.5 Press Releases ................................................................................................ 58

ARTICLE 19
19.1 Entire Agreement; Integration; Exhibits ...................................................... 58
19.2 Amendments ................................................................................................ 59
19.3 No Waiver ...................................................................................................... 59
19.4 No Agency, Partnership, Joint Venture or Lease ......................................... 59
19.5 Severability .................................................................................................. 59
19.6 Mobile-Sierra ............................................................................................... 59
19.7 Counterparts ................................................................................................ 59
19.8 Electronic Delivery ....................................................................................... 59
19.9 Binding Effect ............................................................................................... 60
19.10 No Recourse to Members of Buyer ............................................................. 60
19.11 Forward Contract ......................................................................................... 60
19.12 Change in Electric Market Design .............................................................. 60
19.13 Service Contract ......................................................................................... 60
19.14 Further Assurances .................................................................................... 60
<table>
<thead>
<tr>
<th>Exhibits</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>Facility Description</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Facility Construction and Commercial Operation</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Compensation</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Scheduling Coordinator Responsibilities</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Progress Reporting Form</td>
</tr>
<tr>
<td>Exhibit F-1</td>
<td>Form of Monthly Expected Available Capacity Report</td>
</tr>
<tr>
<td>Exhibit F-2</td>
<td>Form of Monthly Expected Available Storage Capability Report</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Form of Daily Availability Notice</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>Form of Commercial Operation Date Certificate</td>
</tr>
<tr>
<td>Exhibit I</td>
<td>Form of Capacity Test Certificate</td>
</tr>
<tr>
<td>Exhibit J</td>
<td>Form of Construction Start Date Certificate</td>
</tr>
<tr>
<td>Exhibit K</td>
<td>Form of Letter of Credit</td>
</tr>
<tr>
<td>Exhibit L</td>
<td>[Reserved.]</td>
</tr>
<tr>
<td>Exhibit M</td>
<td>Form of Replacement RA Notice</td>
</tr>
<tr>
<td>Exhibit N</td>
<td>Notices</td>
</tr>
<tr>
<td>Exhibit O</td>
<td>Capacity Tests</td>
</tr>
<tr>
<td>Exhibit P</td>
<td>Annual Capacity Availability Calculation</td>
</tr>
<tr>
<td>Exhibit Q</td>
<td>Operating Restrictions</td>
</tr>
<tr>
<td>Exhibit R</td>
<td>Metering Diagram</td>
</tr>
<tr>
<td>Exhibit S</td>
<td>Form of Consent to Collateral Assignment</td>
</tr>
<tr>
<td>Exhibit T</td>
<td>CPM Adjustment Factors</td>
</tr>
<tr>
<td>Exhibit U</td>
<td>Supply Chain Code of Conduct</td>
</tr>
<tr>
<td>Exhibit V</td>
<td>Material Permits</td>
</tr>
<tr>
<td>Exhibit W</td>
<td>Force Majeure Event and/or Development Cure Period Claim Form</td>
</tr>
</tbody>
</table>
ENERGY STORAGE AGREEMENT

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

RECITALS

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

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

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility’s NQC will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions);

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 3.6(c).

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, the term “Affiliate,” when used with respect to Seller shall not include any direct or indirect tax equity investor.

“Agreement” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.
“Ancillary Services” means ancillary services that the that the Facility is capable of providing consistent with the Operating Restrictions, including spinning reserve, non-spinning reserve, regulation up, and regulation down, as each is defined in the CAISO Tariff, and any additional Ancillary Services added in accordance with Section 3.3.

“Annual 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.

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

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

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Facility) within the Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the charging or discharging of the Facility.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.10 with respect to the Available Effective Capacity and Available Storage Capability, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).

“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 Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“Available Effective Capacity” has the meaning in Exhibit P.

“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 quotient (expressed as a decimal) of (a) the Charging Energy after reaching 100% SOC or the first five (5) hours of the charging phase of the
applicable Capacity Test, as applicable, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“Battery Discharging Factor” means the quotient (expressed as a decimal) of (a) the Facility Energy after the first four (4) hours of the discharging phase of the applicable Capacity Test, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“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 Default” means a failure by Buyer or its agents to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.4(c).

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

“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 or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the 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-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(iii).

“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” or “C.I.” has the meaning set forth in Exhibit P.

“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 charge or discharge 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 Attributes are measured in MW and shall exclude Energy, Green Attributes, and Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

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

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

“Capacity Test” or “CT” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity or any other test conducted pursuant to Exhibit O.

“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 directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownerships interests of Seller or its Affiliates, any trustee or agent or similar representative acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all Energy delivered to the Delivery Point pursuant to a Charging Notice, as measured by the Facility Meter.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the 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 further provided that, if, during a period when the Facility is instructed by Buyer’s SC, CAISO, the PTO or any other Governmental Authority to be charging, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to such
instruction. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

“COD Certificate” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation” has the meaning set forth in Section 2 of Exhibit B.

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

“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 Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.6(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.6.

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

“Construction Start” has the meaning set forth in Section 1(a) of Exhibit B.

“Construction Start Date” has the meaning set forth in Section 1(a) of Exhibit B.

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

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

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

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.
“CPM Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit T.

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

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(ii).

“CPUC System RA Penalty” means the penalties for “System Procurement Deficiency” adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

“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 during the relevant time period;

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

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

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

“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, as applicable, in a dollar amount set forth in
Section 11.3(a).

“**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 RA**” means the amount of Net Qualifying Capacity expressed in MW
that the Facility would have delivered to the Delivery Point, but for (i) Buyer Default or (ii) a Force
Majeure Event.

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

“**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 Section 4 of Exhibit B.

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

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given
by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at
a specific MW rate for a specified period of time or to an amount of MWh; provided, that if, during
a period when the Facility is instructed by Buyer’s SC, CAISO, the PTO or any other
Governmental Authority to be discharging, such “Discharging Notice” shall be deemed to be
automatically adjusted to be equal to such instruction.

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

“**Dispatch Notice**” means any Charging Notice, Discharging Notice and any subsequent
updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to
charge or discharge Facility Energy at a specified MWh rate to a specified Stored Energy Level;
*provided*, any such operating instruction or updates shall be in accordance with the Operating
Restrictions. Dispatch Notices may be communicated electronically (i.e. through ADS, AGC or e-
mail), or telephonically, in accordance with the procedures set forth in Section 4.7. Telephonic or
other verbal communications may be documented (either recorded by tape, electronically or in
writing) without further notification to, or consent being required from, either Party with respect
to such Party being recorded by the other, including by Buyer’s designated Scheduling
Coordinator.
“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Capacity**” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“**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.

“**Efficiency Rate**” means the rate calculated as the quotient of (a) the sum of (i) Facility Energy plus (ii) Idle Period Auxiliary Use for which Seller is required to reimburse Buyer, if applicable, divided by (b) Energy In, based on actual Facility operations for each applicable month.

“**Efficiency Rate Factor**” has the meaning set forth in Exhibit C.

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

“**Emission Reduction Credits**” or “**ERCs**” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

“**Energy In**” means the total Energy (in MWh) delivered by Buyer to the Facility pursuant to a Charging Notice as measured at the Facility Meter (without adjusting for Electrical Losses or Station Use).

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

“**Environmental Costs**” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility,
all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site but excluding any such costs, charges and fees associated with Charging Energy.

“Estimated Placed-In-Service Date” has the meaning set forth in Section 2.6.

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

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

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

“Facility” means the energy storage 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 Product (but excluding any Interconnection Facilities (other than Seller’s Interconnection Facilities), Network Upgrades and Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means all Energy delivered to the Delivery Point from the Facility pursuant to a Discharging Notice, as measured by the Facility Meter, net of Electrical Losses and Station Use. All Facility Energy shall have originally been delivered to the Facility as Charging Energy.

“Facility Meter” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved 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 Facility and the amount of Facility Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“FCDS Deficiency Notice” has the meaning set forth in Section 2.6.

“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).

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.
“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

“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.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“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.

“Greenhouse Gas” or “GHG” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

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

“Guaranteed Capacity Availability” has the meaning set forth in Section 4.3(a).

“Guaranteed Commercial Operation Date” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.
“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Idle Period Auxiliary Use” means Auxiliary Use consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice for which Seller does not pay retail rates to its retail electric utility provider.

“Imbalance Energy” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy or Charging Energy deviates from the amount of Scheduled 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; and (c) any other form of incentive relating in any way to the Facility that is not an environmental attribute.

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

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

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

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

“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 five hundred (500) MW.

“Interconnection Delay Notice” has the meaning set forth in Section 2.6.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.
“Interest Rate” has the meaning set forth in Section 8.2.

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

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

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


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

“kW” means kilowatts in alternating current, unless expressly stated in terms of direct current.

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

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

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity, tax credit or cash 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.

“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, Incentives (calculated on an after-tax basis), and Capacity Attributes and the Parties agree that Seller’s lost revenue under this Agreement resulting from a Buyer Event of Default are direct damages and may be included in Seller’s determination of its Losses.

“ Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

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

“Milestones” means the 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 Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.10(a).

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

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

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
“NERC” means the North American Electric Reliability Corporation or any successor entity.

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

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

“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.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

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

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

“Performance Security” means (i) cash or (ii) a Letter of Credit, in the amount specified for the Performance Security 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 energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.11(a).

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

“PMIN” means the applicable CAISO-certified minimum operating level of the 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 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 energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“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 as calculated in accordance with Section 3.5(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Plan” has the meaning set forth for “Resource Adequacy Plan” in the CAISO Tariff.
with respect to Buyer’s monthly or annual RA Compliance Showings.

“RA Shortfall” means, for a given Showing Month, the difference, expressed in kW, of (a) the Facility’s Qualifying Capacity minus (b) the sum of (i) the portion of the Net Qualifying Capacity of the Facility for such month which is able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC, plus (ii) Replacement RA provided by Seller with respect to an expected shortfall in Resource Adequacy Benefits of the Facility for such Showing Month, if applicable, plus (iii) Deemed Delivered RA for such month.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any month shown on an RA Plan, commencing with the RA Plan for the Showing Month that includes the RA Guarantee Date (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility’s Resource Adequacy Benefits or any Replacement RA, if applicable), for which there is an RA Shortfall.

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

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

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

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

“Replacement RA” means resource adequacy benefits equivalent to Resource Adequacy Benefits (including satisfying the same Slice of Day and related characteristics) that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, that is connected to the CAISO Grid and is under the operational control of the CAISO, and, except as otherwise provided in this Agreement, 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, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

“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, 20-06-031, 20-12-006, 21-06-029, 21-07-014, 22-03-034, 22-06-050, 22-12-028, 22-08-039, 23-04-010 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 Charging Energy or Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

“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 4.4(c).

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

“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; provided that the Parties agree that Seller’s
lost revenue under this Agreement and Incentives (calculated on an after-tax basis) resulting from a Buyer Event of Default may be included in the determination of Losses.

“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. An updated Site description provided by Seller pursuant to this definition shall be automatically incorporated as the new Exhibit A upon its receipt by Buyer unless Buyer’s approval is required, then it shall be incorporated automatically as the new Exhibit A upon Buyer’s approval.

“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 Stored Energy Level relative to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage. The “SOC” shall represent the range of Stored Energy Level reserved exclusively for Buyer’s use; provided, Seller may represent such range anywhere within the actual available capability of the Facility.

“SOD” or “Slice of Day” has the meaning set forth in the Resource Adequacy Rulings.

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

“Station Use” means, in addition to all Auxiliary Use, 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 Rate” has the meaning set forth on the Cover Sheet, *provided*, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that the ITC rate for the Facility is higher than Seller’s assumed ITC rate as set forth on the Cover Sheet, the Storage Rate shall be reduced by [REDACTED] per kW-mo. for each one (1) percentage point that the claimed ITC rate is above thirty percent (30%).

“Stored Energy Level” means, at a particular time, the amount of Energy in the Facility available to be discharged to the Delivery Point as Facility 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 (a) 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, or (b) a “System Emergency” or equivalent term, as defined by CAISO or the PTO.

“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.

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

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

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

“Transformer Failure” means failure of all or part of the main power transformer that results in the Facility being unable to generate and/or deliver Facility Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice.

“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 either prevents (i)
Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System or (ii) Seller from delivering Facility Energy to the Delivery Point.


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

“Unplanned Outage” means a period during which the Facility is unavailable to provide some or all of the Product due to the need to maintain or repair a component of the Facility, which period is not a Planned Outage.

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;
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;

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof within five (5) Business Days of receipt thereof:

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

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

(c) An Interconnection Agreement between Seller (or Seller’s Affiliate) 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; The Facility is providing Resource Adequacy Benefits for the month in which Delivery Term commences.

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

(h) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and to fully enable the Facility to be Scheduled by Buyer, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator;

(i) Seller has delivered to Buyer an officer’s certificate stating (i) that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b), and (ii) the ITC rate which Seller claims will apply for the Facility; and

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

2.3 **Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate’s suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date (including any extension thereof in accordance with Exhibit B); 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 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. Seller shall give Buyer at least forty-five (45) days’ Notice before the Commercial Operation Date.

2.6 **Termination for Interconnection Costs/Delay.** Seller’s Facility is in CAISO interconnection queue cluster 14. Seller shall provide Notice to Buyer within ten (10) Business Days of Seller’s receipt of or (y) any notice from the CAISO of the results of any Deliverability Allocation Process in 2025 informing Seller of the results of Seller’s application for Full Capacity Deliverability Status that awards Seller FCDS for less than one hundred percent (100%) of the Guaranteed Capacity (“**FCDS Deficiency Notice**”).

23
(c) If, despite Seller’s commercially reasonable efforts to obtain FCDS for one hundred percent (100%) of the Guaranteed Capacity, Seller receives FCDS for less than one hundred percent (100%) but for ninety percent (90%) or more of the Guaranteed Capacity, then the Parties shall negotiate in good faith to reduce the Guaranteed Capacity in a way that maximizes the amount of Resource Adequacy Benefits the Facility is qualified to provide.

(d) If, despite Seller’s commercially reasonable efforts to obtain FCDS for one hundred percent (100%) of the Guaranteed Capacity, Seller receives FCDS for less than ninety percent (90%) of the Guaranteed Capacity, then the Parties will meet and confer to negotiate in good faith a proposed modification to the Contract Price and adjusted contract terms for a Product that includes no FCDS or less FCDS than ninety (90%) percent of the Guaranteed Capacity to align with such FCDS Deficiency Notice. If the Parties are unable to agree upon such proposed modifications within sixty (60) days of Seller’s FCDS Deficiency Notice, then either Party shall have the right to terminate this Agreement by providing Notice to the other Party within ninety (90) days after issuance of the FCDS Deficiency Notice.

ARTICLE 3
PURCHASE AND SALE

3.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product provided that no such use or resale shall relieve Buyer of any obligations hereunder, including Section 5.2. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available,
subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

3.2 **Facility Energy.** Except for Facility Energy resulting from a Seller Initiated Test, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services, with characteristics and quantities determined in accordance with the CAISO Tariff. The Facility will be designed to enable it to provide the Ancillary Services described in Part D of Exhibit Q. Upon a request by Buyer, the Parties shall negotiate in good faith to modify the terms of this Agreement for the Facility to be able to provide Black Start (as defined in the CAISO Tariff) or any other Ancillary Services not listed in Exhibit Q, provided the Facility is capable of providing such additional Ancillary Service consistent with the Operating Restrictions and without Seller incurring more than *de minimus* additional administrative costs associated therewith.

3.4 **Capacity Attributes.** Seller shall diligently pursue 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, 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 3.6, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.6, 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 3.6, 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 the expected RA Shortfall with respect to such Showing Month, provided that 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. Unless Buyer is reselling Resource Adequacy Benefits from the Facility to a central procurement entity, Buyer will not include the Net Qualifying Capacity of the Facility in its Supply Plan as a Local Capacity Area Resource and in such event, Replacement RA delivered by Seller is not required to be described as a Local Capacity Area Resource.

3.5 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as set forth in Section 3.5(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. The “RA Deficiency Amount” shall equal the sum of:

(i) The (i) RA Shortfall, multiplied by (ii) the product of (X) the CPM Soft Offer Cap (or its successor), and (Y) the CPM Adjustment Factor applicable to such RA Shortfall Month (“CPM Price”), plus

(ii) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty (“CPUC-Penalized Shortfall”), Seller’s pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus

(iii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall (“CAISO-Penalized Shortfall”) Seller’s pro rata share of the amount of such CAISO costs, charges or penalties associated with the RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall).

3.6 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 with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions” provided Compliance Actions shall not include increasing the Storage Capacity beyond the Guaranteed Capacity prior to the Commercial Operation Date or the Installed Capacity on and after the Commercial Operation Date.

(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 3.6(c) 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.

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

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller retains all rights to the Facility and to use and dispose of Product before and after the Delivery Term. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Except as otherwise set forth in this Agreement, Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with: (a) the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and (b) the acceptance and transmission of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses with regard to (a) and (b). The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) during charging and discharging of the Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use may be served by Charging Energy or Facility 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 during periods of charging or discharging pursuant to a Charging Notice or Discharging Notice, (iii) the supply of Auxiliary Use shall not be deemed a violation of this Agreement, including Sections 4.9(c), (d), and (f), and (iv) Seller shall procure Energy necessary to serve all Idle Period Auxiliary Use through retail service established with the local utility. If any Energy provided by Buyer (i.e. originally delivered as Charging Energy) is used by Seller for Idle Period Auxiliary Use, then Seller shall (A) be solely responsible for (and shall reimburse Buyer, as applicable) any and all costs, penalties and charges resulting therefrom, (B) pay to Buyer an amount equal to the monthly average cost of Charging Energy times the total number of MWhs reasonably determined to have been used to serve Idle Period Auxiliary Load (including any amount of Charging Energy used to serve Idle Period Auxiliary Load that is lost to round-trip efficiency losses, if any), and (C) if such usage was inconsistent with any CAISO rules, other applicable Laws or any applicable utility tariff, shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff).

4.3 **Performance Guarantees; Ancillary Services.**

(a) During the Delivery Term, the Facility shall maintain an Annual Capacity Availability during each Contract Year of no less than ninety-eight percent (98%) (the “Guaranteed Capacity Availability”), which Annual Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. The Guaranteed Capacity Availability and Guaranteed Efficiency Rate are collectively the “Performance Guarantees”.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Performance Guarantees are (i) the Monthly Capacity Payment adjustment and/or Capacity Availability Payment True-Up, as applicable, as set forth in Exhibit C, and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iii) with respect to the Guaranteed Capacity Availability, the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility’s CAISO Certification associated with the Effective Capacity and consistent with the Operating Restrictions (subject to any changes required by Law or CAISO requirements). To the extent the Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval (including by reason of failing an Ancillary Services certification test), then as exclusive remedies the Availability Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%), and Seller shall reimburse Buyer for any CAISO charges or penalties arising from the failure to provide such Ancillary Services.

(e) Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 and consistent with the Operating Restrictions, provided
that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with conducting such additional CAISO Certification.

4.4 **Facility Testing.**

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Buyer shall (i) comply with all Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

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

(iii) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement the amount of Installed Capacity and Effective Storage Capacity shall never be deemed to exceed the Guaranteed Capacity, and (for the avoidance of doubt) (A) Buyer shall have no rights to instruct Seller to charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Guaranteed Capacity, the Installed Capacity or the Effective Storage Capacity, (B) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, and (C) for purposes of calculating the Guaranteed Capacity Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

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

(c) **Buyer or Seller Initiated Tests.** Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Tests, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed 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 Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test other than a Capacity Test 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 Dispatch 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 Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Facility during such Seller Initiated Test.

4.5 **Testing Costs and Revenues.**

(a) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Facility and Buyer shall be entitled to all CAISO revenues associated with a 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 Charging Energy for such Seller Initiated Test, and (2) 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 O, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

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

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) Seller shall operate the Facility to automatically follow Automatic Generation Control such that the Facility can receive continuous instruction on a 4-second basis.

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(b) shall be provided to Buyer within fifteen (15) days of Buyer’s request.
(d) Seller shall maintain accurate records with respect to all Capacity Tests.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the CAISO Tariff. Subject to the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If an electronic submittal is not possible for reasons beyond Buyer’s control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the CAISO Tariff.

4.8 [Intentionally Omitted]

4.9 **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 from the Delivery Point to the 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 Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer will have the right to charge the 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 compliance with the Operating Restrictions and the CAISO Tariff. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the 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 Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the 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 4.9(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and other benefits (including Product) associated with such discharge.
(d) **No Unauthorized Discharging.** Seller shall not discharge the 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. Buyer shall have the right to discharge the 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, including compliance with the Operating Restrictions and the CAISO Tariff. 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) **Unauthorized Charges and Discharges.** If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder or as expressly addressed in Section 4.9(f), 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 the failure to implement such procedures shall be an Event of Default under Article 11.

(f) **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 4.9 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. To the extent the 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.

(g) **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 charge and discharge the Facility (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the 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 Facility testing shall be for Seller’s account. Upon CAISO Commercial Operation, Buyer or its designated SC shall be the Scheduling Coordinator for the Facility, and 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 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.

(h) **Curtailments.** Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such
violation is caused by Seller’s compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the operational procedures.

4.10 **Capacity Availability Notice.**

(a) 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 Available Capacity, and (ii) Available Storage Capability, for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable (“Monthly Forecast”).

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) (the “Availability Notice”). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) changes or is expected to change after Buyer’s receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer’s reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **Outages.**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“Outage Schedule”) for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned Outage. Seller may propose changes to any previously Planned Outage fifteen (15) days prior to such Planned Outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer’s receipt thereof, in Buyer’s sole discretion but consistent with Prudent Operating Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO. Seller shall communicate to Buyer all changes to a Planned Outage Schedule and all other changes to any otherwise拟行的Annual Planned Outage Schedule.
Outage and estimated time of return of the Facility as soon as practicable after the condition causing the change becomes known to Seller. Buyer cannot issue Charging Notices or Discharging Notices to the extent inconsistent with the Planned Outages of the Facility.

(ii) If (i) reasonably required in accordance with Prudent Operating Practices, (ii) such outage is required to avoid damage to the Facility, (iii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through October, or (iv) the Parties agree otherwise in writing, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.11(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 limit maintenance repairs performed pursuant to this Section 4.11(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.11(a)(ii), no outages 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. **Notice of Unplanned Outages** Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following knowledge of the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to request that Seller inspect the Facility during such Unplanned Outage and Buyer may be present at such inspection and Buyer may inspect all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall (i) comply with all Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.
ARTICLE 5
TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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) and with respect to Charging Energy prior to its delivery to Seller at the Delivery Point, if any. 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 Environmental Costs. Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and

(d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.
ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility.

(a) 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 applicable Law and Prudent Operating Practices relating to the operation and maintenance of the Facility. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer’s scheduling representative upon request.

(b) Seller shall use commercially reasonable efforts to promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

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 ID, and (iv) provide that in the event of any curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.
ARTICLE 7
METERING

7.1 Metering.

(a) Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use and all Idle Period Auxiliary Use. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Each meter shall be kept under seal, such seals to be broken only when the Facility 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 Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer 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 Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement and (ii) 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) or (ii) 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 Facility Meter malfunction, or upon Buyer’s reasonable request, Seller shall test the Facility 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 Facility 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 Facility Meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; 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 to the extent available and other 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 Charging Energy, Facility Energy, Station Use, Idle Period Auxiliary Use for which Seller owes reimbursement to Buyer, Energy In, and Replacement RA delivered to Buyer (if any) 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 of Monthly Capacity Payments 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 ten thousand dollars ($10,000).

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement 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 in the amount set forth in the Cover Sheet 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 in the amount set forth in the Cover Sheet 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, and indemnification payments or other damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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 and continuation 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 to the extent of damages or other amounts owed by Seller to Buyer hereunder.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

**ARTICLE 9**

**NOTICES**

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, and Notices of Replacement RA 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 the claiming Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

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

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Storage Rate unprofitable or otherwise uneconomic (including an increase in
component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement; (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order unless 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 order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit W, (b) provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party.

10.4 Termination Following Force Majeure Event or Development Cure Period.

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) plus the payment of Commercial Operation Delay Damages equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have
otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays but for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement.

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

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.5, and (B) failures related to the Annual Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P) and such failure 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);

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

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 discharged by the Facility;

(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 Contract Year, the year-to-date Annual Capacity Availability multiplied by the Effective Capacity for the applicable period is not equal to at least seventy percent (70%) multiplied by the Installed 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 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 (A) one hundred eighty (180) days (“Cure Plan”) or (B) if such failure is caused by a Transformer Failure that cannot be cured pursuant to a Cure Plan within one hundred eighty (180) days, not to exceed three hundred sixty-five (365) days, so long as Seller commences a Cure Plan within such one hundred eighty (180) day period and thereafter diligently pursues such Cure Plan to completion, and (y) complete such Cure Plan in all material respects as set forth therein, including within the applicable timeframe set forth therein;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within ten (10) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a 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.** If the Early Termination Date is designated as a result of an Event of Default that occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

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

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (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, design, permitting, financing, construction and commissioning 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 all 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
There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

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

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

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

11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer’s Event of Default or pursuant to Section 2.6(d), 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 date of such early termination, 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, except that Seller will be permitted to adjust the price to account for documented and reasonable costs and lost or changed Incentives resulting from a Force Majeure Event), 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) for the purpose of developing and operating a storage facility at the Site so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer in its reasonable discretion. For the avoidance of Doubt, Seller shall be permitted to sell or transfer the land rights or interests in the Site for any other reason without any restriction hereunder.

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.

11.9 Seller Pre COD Liability Limitation. Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller’s aggregate liability under this Agreement for any and all reasons, including liability for payment of Daily Delay Damages, Commercial Operation Delay Damages and the Damage Payment, shall not exceed three hundred percent (300%) of the amount of the Development Security (“Seller Pre-COD Liability Cap”).
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 INCENTIVES, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALLY REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY INCENTIVES, IF ANY, DETERMINED ON AN AFTER-TAX BASIS, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, 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 will be located in the State of California.
Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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 and affirmatively waives 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 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. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with the requirements of this Section 13.4.

**ARTICLE 14**

**ASSIGNMENT**

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any 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 (“Consent to Collateral Assignment”).

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

(a) in the case of (b) only, the assignee is a Permitted Transferee;

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

(c) 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.

**ARTICLE 15**
**DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC – 17]

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute,
the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.4 Venue. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

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

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

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

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

(a) **General Liability.** Seller shall provide and maintain, at its sole expense, the following types and minimum limits of insurance with a carrier rated “A- VII” or higher by A.M. Best’s Key Rating Guide: (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.** Employer’s 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) **Property Damage Insurance.** Seller shall maintain or cause to be maintained during the Delivery Term, property damage insurance with a policy limit of not less than the full replacement cost of the Facility on a per occurrence basis.

(g) **Pollution Liability Insurance.** Seller shall maintain or cause to be maintained during the Contract Term, pollution liability insurance in an amount not less than Two Million Dollars ($2,000,000) each occurrence covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from any subcontractor’s performance or lack of performance of work under this Agreement, or might be required by federal, state, regional, municipal, and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. If such coverage is on a “claims made” policy form, any applicable “retroactive date” shall be no later than the Effective Date and shall be maintained for at least two (2) years beyond the termination of this Agreement, to allow for a reasonable extended reporting period.

(h) **Subcontractor Insurance.** Seller shall require all of its material 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 (h)(i) and (h)(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(h).

(i) **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. All insurance required herein shall be primary coverage without right of contribution from any insurance of Buyer, and such policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and subcontractors and any subrogation rights which may pass to Seller’s insurance carriers for the payment of any claims. 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.

(j) **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, 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.

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, counsel, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s) and potential Lender(s) that have a bona fide need to know), 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 or, with respect to counsel, is otherwise bound by a duty of confidentiality with respect to such Confidential Information.

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 **Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended.

19.14 **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.

ESCA-PLD-CPA1, LLC
By: ____________________________
Name: __________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority
By: ____________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Drifter Energy Storage

Site includes all or some of the following APNs: 5110200275, 5110200155, 5110200145, 5110200130

City: Moorpark, CA

County: Ventura

Zip Code: 93021

Latitude and Longitude:

Facility Description: A 300 MW / 1,200 MWh standalone lithium-ion battery storage project, as represented in the site diagram below:

Delivery Point: SCE Moorpark substation 220 kV bus

Facility Meter: Refer to Exhibit R

PNode: To be determined

Exhibit A - 1
Transmission Provider: Southern California Edison

Additional Information: N/A
1. **Construction of the Facility.**

(a) “Construction Start” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors, and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

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

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

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

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

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent (i) the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays, and (iii) such delays do not run concurrently:

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

(b) a Force Majeure Event occurs; or

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

(d) Buyer has not made all necessary arrangements to deliver Charging Energy to, and receive the Facility Energy at, the Delivery Point by the Guaranteed Commercial Operation Date.
Seller shall submit any claim for Development Cure Period delays within (x) three (3) Business Days of the applicable milestone in the case of (a), (c) or (d) above, and (y) fourteen (14) days after the initial occurrence of the claimed Force Majeure Event in the case of (b) above, in substantially the form set forth in Exhibit W. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Five Hundred Thousand Dollars ($500,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. 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.
EXHIBIT C

COMPENSATION

(a) Monthly Compensation.

(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 \(\times 1000\) \(\times\) Effective Capacity \(\times\) Efficiency Rate Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity 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:

\[
\text{Efficiency Rate Factor} = 0
\]

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

Exhibit C - 1
“Capacity Availability Payment True-Up Amount” means an amount equal to A x B - C, where:

\[ A = \text{The sum of the year-to-date Monthly Capacity Payments} \]

\[ B = \text{The Capacity Availability Factor} \]

\[ C = \text{The sum of any Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.} \]

“Capacity Availability Factor” means:

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

\[ \text{Capacity Availability Factor} = 0 \]

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

\[ \text{Capacity Availability Factor} = \text{Guaranteed Capacity Availability} - \text{YTD Annual Capacity Availability} \]

(iii) If the product of [(i) YTD Annual Capacity Availability plus (ii) Force Majeure Unavailability], times (iii) the Effective Capacity is less than seventy percent (70%) of the Installed Capacity, then:

\[ \text{Capacity Availability Factor} = (\text{Guaranteed Capacity Availability} - \text{YTD Annual Capacity Availability}) \times 1.5 - (\text{Force Majeure Unavailability} \times 0.5) \]

“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.

provided, if the result of any of the calculations in clauses (ii) or (iii) above is greater than 1.0, then the Capacity Availability Factor will be deemed to be equal to 1.0.

(b) Tax Incentives. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Incentives, or if any Incentives 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 Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Incentives or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes except as otherwise expressly provided herein in the definitions of “Losses”, “Settlement Amount”, Sections 11.3 and 11.6 and Article 12. Seller shall have exclusive rights to all Incentive 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 Incentives 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 Charging Energy, Facility 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. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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. In addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c), Seller shall be responsible for all CAISO costs and penalties (including associated with Imbalance Energy costs) resulting from (i) during any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch, any deviations from such CAISO Dispatch, (ii) charging or discharging the Facility when not subject to a Charging Notice or Discharging Notice, or (iii) any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement 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 in compliance with this Agreement and the CAISO Tariff). For the avoidance of doubt, any CAISO costs or penalties that are assessed (y) as a result of a change in the bidding or scheduling of the Facility between CAISO’s Day Ahead Market and CAISO’s fifteen minute or real-time market or (z) resulting from an infeasible CAISO dispatch instruction shall be Buyer’s responsibility. Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

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

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

(f) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
(g) **Master Data File and Resource Data Template.** Seller shall provide the data to 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 and Buyer (as SC) shall promptly provide such data to CAISO. Neither Party shall change such data without the other Party’s prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and provide information to Buyer for Buyer to update such data with CAISO as appropriate and Buyer (as SC) shall promptly provide any such updates to CAISO.

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

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month, as applicable.
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 MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[MW Per Hour] – [Insert Month]

<table>
<thead>
<tr>
<th>1:00</th>
<th>2:00</th>
<th>3:00</th>
<th>4:00</th>
<th>5:00</th>
<th>6:00</th>
<th>7:00</th>
<th>8:00</th>
<th>9:00</th>
<th>10:00</th>
<th>11:00</th>
<th>12:00</th>
<th>13:00</th>
<th>14:00</th>
<th>15:00</th>
<th>16:00</th>
<th>17:00</th>
<th>18:00</th>
<th>19:00</th>
<th>20:00</th>
<th>21:00</th>
<th>22:00</th>
<th>23:00</th>
<th>24:00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day 4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day 5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

[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 F-2

FORM OF MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY REPORT

[Stored Energy 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 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

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
FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _______________________

Station: _________________________  Issued By: _________________________

Unit: ___________________________  Issued At: _________________________

Unit 100% Available No Restrictions: __________________________

<table>
<thead>
<tr>
<th>Hour Ending</th>
<th>Available Capacity (MW)</th>
<th>Available Storage Capability (MWh)</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0:00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments: ________________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

Exhibit G - 1
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 Energy Storage Agreement dated _______ ("Agreement") by and between ESCA-PLD-CPA1, LLC ("Seller") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

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

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

3. The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

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 of the Facility 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.

8. The Facility and its meters have been designed and installed in a manner such that all Energy used for Idle Period Auxiliary Use within the Facility is metered in conformance with the local utility’s requirements.

9. The total rated power of the Facility inverters associated with the Installed Capacity as measured to the Delivery Point is at least [____] MW charging and [____] MW discharging at 45°C ambient air temperature.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ______ day of ____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:____________________________
EXHIBIT I

FORM OF CAPACITY TEST CERTIFICATE

This certification ("Certification") of Capacity Test results 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 Energy Storage Agreement dated ___________ ("Agreement") by and between ESCA-PLD-CPA1, LLC ("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.

I hereby certify that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, all 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 ESCA-PLD-CPA1, LLC (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Energy Storage 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”);

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 ________.

ESCA-PLD-CPA1, LLC

By: ________________________________
Its: ________________________________

Date: ________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Energy Storage 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, NY.

Funds under this Letter of Credit are available to Beneficiary by complying 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, if any, 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 Certificate”).

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by courier or 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 presentations made under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer on or before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

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

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be
considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Energy Storage 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

[RESERVED.]
This Replacement RA Notice (this “Notice”) is delivered by ESCA-PLD-CPA1, LLC (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Energy Storage 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 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 To be repeated for each unit if more than one.
ESCA-PLD-CPA1, LLC

By: __________________________
Its: __________________________

Date: __________________________
### EXHIBIT N

#### NOTICES

<table>
<thead>
<tr>
<th>ESCA-PLD-CPA1, LLC (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td></td>
</tr>
<tr>
<td>Street: 1800 Wazee Street, Suite 500</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Denver CO 80202</td>
<td>City: Los Angeles CA, 90017</td>
</tr>
<tr>
<td>Attn: Prologis Asset Management</td>
<td>Attn: Chief Executive Officer</td>
</tr>
<tr>
<td>Phone: 303-567-5034</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:globalenergyops@prologis.com">globalenergyops@prologis.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td></td>
</tr>
<tr>
<td>Duns:</td>
<td>Duns:</td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td></td>
</tr>
<tr>
<td>Attn: Prologis Asset Management</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone: 303-567-5034</td>
<td>Phone: (213) 280-4011</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:globalenergyops@prologis.com">globalenergyops@prologis.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Operations 24/7 Desk</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (817) 462-1509</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:GlobalEnergyMarketing@prologis.com">GlobalEnergyMarketing@prologis.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Confirmations:</strong></td>
<td></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (213) 280-4011</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:Isaxby@cleanpoweralliance.com">Isaxby@cleanpoweralliance.com</a></td>
</tr>
<tr>
<td>Email:</td>
<td>Email CC: <a href="mailto:energycontracts@cleanpoweralliance.org">energycontracts@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (213) 280-4011</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail:</td>
<td></td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td></td>
</tr>
<tr>
<td>BNK:</td>
<td>BNK: River City Bank</td>
</tr>
<tr>
<td>ABA:</td>
<td>ABA: 121133416</td>
</tr>
<tr>
<td>ACCT:</td>
<td>ACCT: XXXXXXXX7557</td>
</tr>
</tbody>
</table>

Exhibit N - 1
<table>
<thead>
<tr>
<th><strong>ESCA-PLD-CPA1, LLC</strong></th>
<th><strong>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>(&quot;Seller&quot;)</td>
<td>(&quot;Buyer&quot;)</td>
</tr>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 1800 Wazee Street, Suite 500</td>
<td>Street:</td>
</tr>
<tr>
<td>City: Denver CO 80202</td>
<td>City:</td>
</tr>
<tr>
<td>Attn: Prologis Asset Management</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone: 303-567-5034</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email:</td>
</tr>
<tr>
<td>Email: <a href="mailto:globalenergyops@prologis.com">globalenergyops@prologis.com</a></td>
<td>Email:</td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td><strong>Reference Numbers:</strong></td>
</tr>
<tr>
<td>Duns:</td>
<td>Duns:</td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>E-mail:</td>
</tr>
<tr>
<td>E-mail:</td>
<td>E-mail:</td>
</tr>
</tbody>
</table>
EXHIBIT O

CAPACITY TESTS

Capacity Test Notice and Frequency

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

B. Subsequent Capacity Tests. Following the Commercial Operation 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 Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity has varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any 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 Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) determined pursuant to such Capacity Test shall become the new Effective Capacity at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment 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 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 the 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 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.

**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 Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at the lesser of maximum discharging level (MW) and Guaranteed Storage Capacity for four (4) continuous hours; and

(2) Electrical input at maximum charging level at the 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 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 and recorded simultaneously for the Facility, at two (2) second intervals:

(1) Time;

(2) The amount of Facility Energy;

(3) The amount of Charging Energy;

(4) The amount of Station Use;

(5) 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 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 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 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 to go from 0% SOC to 100% SOC;

(7) Amount of Facility Energy to go from 100% SOC to 0% SOC.

E. **Test Conditions.**

(1) **General.** At all times during a CT, the 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 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 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 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 the completed Capacity Test Certificate, together with 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.

Seller’s CT report and any submitted Capacity Test Certificate shall be deemed invalid if not delivered to Buyer within (5) Business Days after the completion of any CT. 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 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 Capacity.** The Effective Capacity shall be updated as
The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity Test

- Procedure:

  (1) System Starting State: The Facility will be in the on-line state at 0% SOC.

  (2) Record the initial value of the SOC.

  (3) Command a real power charge that results in an AC power of Facility’s maximum charging level, and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.

  (4) Record and store the SOC after the earlier of (a) the 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 Charging Energy.

  (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the lesser of (i) the Storage Facility’s maximum discharging level and (ii) the Guaranteed Storage Capacity, 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 lesser of (i) the maximum discharging level and (ii) the Guaranteed Storage Capacity.

  (7) Record and store the 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 Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation 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 Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC. Record and store the additional Facility Energy, if applicable.

- **Test Results**

  (1) The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

---

**B. AGC Discharge Test**

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Facility’s maximum discharging level within 1 second.

- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**

  (1) Record the Facility active power level at the Facility Meter.

  (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.

  (3) Record and store the Facility active power response (in seconds).

- **System end state:** The Facility will be in the on-line state and at a commanded active power level of 0 MW.

---

**C. AGC Charge Test**

- **Purpose:** This test will demonstrate the AGC charge capability to achieve the Facility’s full charging level within 1 second.

- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**

  (1) Record the Facility active power level at the Facility Meter.
(2) Command the Facility to follow a simulated CAISO RIG signal of \(-P_{\text{max}}\) at .95 power factor for ten (10) minutes.

(3) Record and store the 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.

D. **Reactive Power Production Test**

- **Purpose:** This test will demonstrate the reactive power production capability of the Facility.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- **Procedure:**
  
  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow 150 MVAR for ten (10) minutes.

  (3) Record and store the Facility reactive power response.

- System end state: The 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 facility.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- **Procedure:**

  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow -150 MVAR for ten (10) minutes.

  (3) Record and store the Facility reactive power response.

System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL CAPACITY AVAILABILITY CALCULATION

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

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

“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 Interval(s)” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

\[
\text{Unavailable Calculation Interval} = 1 \times \left( 1 - \min(\frac{A}{\text{Effective Capacity}}, \frac{B}{\text{Effective Capacity} \times 4 \text{ hrs}}) \right)
\]

“A” is the “Available Effective Capacity”, which shall be calculated as the sum of the available capacity, in MW, expected from all system inverters to (considering the conditions of the Facility in total) receive Charging Energy from and deliver Facility Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Capacity.

“B” is the “Available Storage Capability”, which shall be calculated as 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 Facility is available to be charged (calculated as the available battery capability (in MWh) to receive Charging Energy from the Delivery Point 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 Facility is available to be discharged to the Delivery Point (calculated as the available battery capability (in MWh) to delivery Facility Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Available Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of...
(1) the count of available battery racks in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such battery rack (based on normal operating conditions pursuant to the manufacturer’s guidelines) that are able (considering the conditions of the Facility in total) to receive Charging Energy from and deliver Facility Energy to the Delivery Point, but Available Storage Capability shall never exceed the Effective 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 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, such that Available Effective Capacity is calculated as the product of (A) the count of available system inverters, multiplied by (B) the capacity, in MW AC, expected from each system inverter under normal operating conditions pursuant to the manufacturer’s guidelines, and available Storage Capability is likewise calculated as the product of (C) the count of available battery racks, multiplied by (D) the capability, in MWh, expected from each battery rack under normal operating conditions pursuant to the manufacturer’s guidelines, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3), which, with respect to the Available Effective Capacity, shall be calculated as the average of the “Gen Max” and “Load Max” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval, and with respect to the Available Storage Capability, shall be calculated as “Max Energy” minus “Min Energy” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval and for which calculation the Battery Charging Factor and Batter Discharging Factor shall not be applied, provided that any such revised Availability Notice indicating an increase in the Storage Facility’s availability for the applicable Calculation Interval is submitted by Seller at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market. Except as otherwise expressly provided in this Agreement, the calculations of Available Effective Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). 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 Facility inverters associated with the Installed Capacity as measured to the Delivery Point is less than 300 MW charging and 300 MW discharging at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.
EXHIBIT Q
OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the 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 Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

<table>
<thead>
<tr>
<th>File Update Date:</th>
<th>1/25/2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology:</td>
<td>Lithium-ion battery</td>
</tr>
<tr>
<td>Storage Unit Name:</td>
<td>Drifter Energy Storage</td>
</tr>
</tbody>
</table>

### A. Contract Capacity

| Guaranteed Storage Capacity (MW): | 300 |
| Effective Capacity (MW):         | 300 |

### B. Total Unit Dispatchable Range Information

<table>
<thead>
<tr>
<th>Interconnect Voltage (kV)</th>
<th>220</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Storage Level (MWh):</td>
<td>1200</td>
</tr>
<tr>
<td>Minimum Storage Level (MWh):</td>
<td>0</td>
</tr>
<tr>
<td>Stored energy capability (MWh):</td>
<td>1200</td>
</tr>
<tr>
<td>Maximum Discharge (MW):</td>
<td>300</td>
</tr>
<tr>
<td>Maximum Charge (MW):</td>
<td>-300</td>
</tr>
<tr>
<td>Guaranteed Efficiency Rate:</td>
<td>See Cover Sheet</td>
</tr>
<tr>
<td>Maximum energy throughput (BET) (Discharged MWh/year)*:</td>
<td>438,000</td>
</tr>
</tbody>
</table>

*Any Idle Period Auxiliary Use does not count towards maximum energy throughput.

| Maximum energy throughput (BET) (Discharged MWh/day)*: | 2,400 |

*Any Idle Period Auxiliary Use does not count towards maximum energy throughput.

| Excess energy throughput allowance (BET) (Discharged MWh/year): | 600 |

| Excess energy discharge cost | $500/MWh |

### C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Mode</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
<td>300</td>
<td>Energy (Charge)</td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>300</td>
<td>Energy (Discharge)</td>
</tr>
</tbody>
</table>

### D. Ancillary Services

| Spinning Reserve is included | Yes |

Exhibit Q - 1
<table>
<thead>
<tr>
<th>Feature</th>
<th>Included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Spinning Reserve is included</td>
<td>Yes</td>
</tr>
<tr>
<td>Regulation Down is included</td>
<td>Yes</td>
</tr>
<tr>
<td>Regulation Up is included</td>
<td>Yes</td>
</tr>
<tr>
<td>E. Other</td>
<td></td>
</tr>
<tr>
<td>Voltage Support is included</td>
<td>Yes</td>
</tr>
</tbody>
</table>
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, 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 ESA (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] (“ESA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the ESA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the ESA (collectively, the “ESA Collateral”);

C. [Project Company] [[Name of Borrower, if not Project Company], a [Legal Status of Borrower] and an Affiliate of Project Company (“Borrower”)] has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among [Project Company] [Borrower], the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among otherthings, the Lenders have extended commitments to make loans to [Project Company] [Borrower];

D. As collateral security for [Project Company] [Borrower]’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 ESA 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 ESA 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 ESA (subject to CPA’s rights and defenses under the ESA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the ESA or makes any claims with respect to payments or other obligations under the ESA, the terms and conditions of the ESA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

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

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESA, or upon the occurrence or non-occurrence of any event or condition under the ESA 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 ESA (a “ESA Default”), CPA will not terminate or suspend its performance under the ESA until it first gives written notice of such ESA Default to Collateral Agent (“Default Notice”) and, if Collateral Agent sends a written notice (“Collateral Agent Cure Notice”) to Contracting Party within ten (10) days of Collateral Agent’s receipt of the Default Notice indicating Collateral Agent’s intention to cure, affords Collateral Agent or its successor(s), assignee(s), or designee(s) (each of whom shall be subject to the requirements of Section 1.4 of this Consent) a period of sixty (60) days (or, if such ESA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the ESA other than to provide ESA Collateral, thirty (30) days, or, if such ESA Default is for failure by Project Company to provide ESA Collateral, ten (10) Business Days) from the later to occur of (x) the Collateral Agent’s receipt of the notice of such ESA Default from CPA and (y) the expiration of the cure period available to the Project Company under the ESA, to cure such ESA Default; provided, (a) if possession of the Facility is necessary to cure any such non-monetary ESA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after the later to occur of (x) the Collateral Agent’s receipt of the notice of the ESA Default from CPA and (y) the expiration of the cure period available to the Project Company under the ESA 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 later to occur of (x) the Collateral Agent’s receipt of the notice of the ESA Default from CPA and (y) the expiration of the cure period available to the Project Company under the ESA, to complete such proceedings and cure such ESA Default, and (b) if Collateral Agent is prohibited from curing any such ESA 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 ESA 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.

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 ESA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the ESA 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 ESA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize any Substitute Owner other than Collateral Agent, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner has financial qualifications and operating experience a Permitted Transferee, as defined in the Agreement. 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 ESA is in accordance with the Financing Documents without independent investigation thereof.

1.5 Replacement Agreements.

Subject to Section 1.7, if the ESA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (Collateral Agent or such designee, a “Replacement Owner”), CPA shall, at the election of such Replacement Owner, enter into a new agreement with such Replacement Owner for the balance of the obligations under the ESA remaining to be performed having terms substantially the same as the terms of the ESA with respect to the remaining Contract Term (“Replacement ESA”); provided, unless the Replacement Owner is Collateral Agent, before CPA is required to enter into a Replacement ESA, 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.
Notwithstanding the execution and delivery of a Replacement ESA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESA, CPA may suspend performance of its obligations under such Replacement ESA, unless and until all ESA Defaults of Project Company under the ESA or Replacement ESA have been cured (other than any such ESA Defaults that are specific to the Project Company and not curable by the Replacement Owner).

1.6 **Transfer.**

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the ESA and a Replacement ESA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Facility is transferred; provided, the proposed transferee is a Permitted Transferee.

1.7 **Assumption of Obligations.**

(a) **Transferee.**

Any transferee under Section 1.6 shall expressly execute and deliver to CPA a writing in which the transferee (i) expressly assume all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESA or Replacement ESA, as applicable, including posting and collateral assignment of the ESA Collateral, (ii) expressly agrees to be bound by the terms of the ESA to the same extent the Project Company is thereunder, and (cc) agrees it is subject to CPA’s rights and defenses under the ESA and applicable law. Upon such assignment and the cure of any outstanding ESA Default except for any such ESA Default that is personal to the transferor and not curable by the transferee, and payment of all other amounts due and payable to CPA in respect of the ESA or such Replacement ESA, the transferee shall be released from any further liability under the ESA or Replacement ESA, 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 ESA, including posting and collateral assignment of the ESA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESA.

(c) **No Liability.**

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESA 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 ESA, 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 ESA, Collateral Agent shall not have any personal liability to CPA under the ESA or Replacement ESA and the
sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the ESA, a Replacement ESA or the ESA 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 ESA relating to (a) a ESA Default by Project Company under the ESA, (b) any claim regarding a Force Majeure Event by CPA under the ESA, (c) any notice of dispute under the ESA, (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 ESA 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 ESA (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 ESA 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 ESA. 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 ESA is entered into or the ESA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the ESA, 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 ESA (b) terminate or suspend its performance under the ESA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESA by Project Company.

Exhibit S – 5
SECTION 2.  PAYMENTS UNDER THE ESA

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 ESA directly to Project Company to the following account: [______], or to such other address or account as Collateral Agent may specify to CPA from time to time. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the ESA 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 ESA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESA.

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 ESA, 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 ESA 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 ESA 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 ESA is in full force and effect, has 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

Exhibit S – 6
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 ESA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESA; (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 ESA; and (d) the ESA 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 ESA, 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 ESA, 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 ESA 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 under the PPA; (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 ESA; (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 ESA; and (d) the ESA 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 ESA.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT**

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

5.1 **Authorization.**

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

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

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

SECTION 6. **MISCELLANEOUS**

6.1 **Notices.**

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face
to the ESA (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 ESA] of the ESA, (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 ESA. 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
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 ESA or any Replacement ESA, its obligations under such ESA or Replacement ESA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.
6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

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

<table>
<thead>
<tr>
<th>[NAME OF COLLATERAL AGENT], [Legal Status of Collateral Agent].</th>
</tr>
</thead>
<tbody>
<tr>
<td>By:</td>
</tr>
<tr>
<td>__________________________</td>
</tr>
<tr>
<td>[Name] [Title]</td>
</tr>
<tr>
<td>Date: __________________________</td>
</tr>
</tbody>
</table>
SCHEDULE A

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

**CPM Adjustment Factors**

<table>
<thead>
<tr>
<th>Month</th>
<th>Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>50%</td>
</tr>
<tr>
<td>February</td>
<td>50%</td>
</tr>
<tr>
<td>March</td>
<td>50%</td>
</tr>
<tr>
<td>April</td>
<td>50%</td>
</tr>
<tr>
<td>May</td>
<td>100%</td>
</tr>
<tr>
<td>June</td>
<td>100%</td>
</tr>
<tr>
<td>July</td>
<td>250%</td>
</tr>
<tr>
<td>August</td>
<td>250%</td>
</tr>
<tr>
<td>September</td>
<td>250%</td>
</tr>
<tr>
<td>October</td>
<td>100%</td>
</tr>
<tr>
<td>November</td>
<td>50%</td>
</tr>
<tr>
<td>December</td>
<td>50%</td>
</tr>
</tbody>
</table>
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 supply chain are detailed below in our Supply Chain Code of Conduct (“Supply Chain Code”). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

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

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

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

3. **Working Hours**

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

4. **Wages and Benefits**

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

5. **Humane Treatment**

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

6. **Non-Discrimination/Non-Harassment**

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

7. **Freedom of Association**

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.
8. **Restricted Jurisdictions**
Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.
EXHIBIT V

MATERIAL PERMITS

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>City of Moorpark Development Agreement Amendment</td>
</tr>
<tr>
<td>2</td>
<td>City of Moorpark Conditional Use Permit</td>
</tr>
<tr>
<td>3</td>
<td>Caltrans Encroachment Permit</td>
</tr>
</tbody>
</table>
EXHIBIT W

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

__________________________________________________________________________

Seller: [Name]  Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

__________________________________________________________________________

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.

- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.

- Project schedule and/or GANNT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: ________________

Name: ________________

Title: ________________

Date: ________________
## ENERGY STORAGE AGREEMENT

### COVER SHEET

**Seller:** Key Energy Storage, LLC  

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

**Description of Facility:** A 190 MW / 760 MWh battery energy storage system, located in Fresno County, California

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X]EIR (provided CUP type subject to change)</td>
<td>October 1, 2025</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>January 1, 2027</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>January 1, 2027</td>
</tr>
<tr>
<td>Expected Date of CAISO Commercial Operation</td>
<td>April 1, 2027</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>June 1, 2027</td>
</tr>
</tbody>
</table>

**Delivery Term:** Twenty (20) Contract Years

**Guaranteed Capacity:** 190 MW of Installed Capacity at four (4) hours of continuous discharge
Guaranteed Efficiency Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Construction Start Date:** March 1, 2026, 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.
Guaranteed Commercial Operation Date: June 1, 2027, 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.

Storage Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 20</td>
<td>$[Redacted]/kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>

Seller’s Assumed Tax Credits: As of the Effective Date, Seller intends to qualify for and utilize the ITC at forty percent (40%).

Product:

- ☒ Facility Energy
- ☒ Installed Capacity and Effective Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes

Anticipated Flexible Capacity: Amount: 190 (MW), subject to changes by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.)

Scheduling Coordinator: Buyer

Security Amount:

Development Security: $105/kW of Guaranteed Capacity

Performance Security: $105/kW of Installed Capacity

Guarantor: NextEra Energy Capital Holdings, Inc. (as of the Effective Date)
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1 DEFINITIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Contract Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 2 TERM; CONDITIONS PRECEDENT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Contract Term</td>
<td>24</td>
</tr>
<tr>
<td>2.2 Conditions Precedent</td>
<td>24</td>
</tr>
<tr>
<td>2.3 Development; Construction; Progress Reports</td>
<td>25</td>
</tr>
<tr>
<td>2.4 Remedial Action Plan</td>
<td>26</td>
</tr>
<tr>
<td>2.5 Pre-Commercial Operation Actions</td>
<td>26</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 3 PURCHASE AND SALE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Product</td>
<td>26</td>
</tr>
<tr>
<td>3.2 Facility Energy</td>
<td>27</td>
</tr>
<tr>
<td>3.3 Ancillary Services</td>
<td>27</td>
</tr>
<tr>
<td>3.4 Capacity Attributes</td>
<td>27</td>
</tr>
<tr>
<td>3.5 Resource Adequacy Failure</td>
<td>28</td>
</tr>
<tr>
<td>3.6 Compliance Expenditure Cap</td>
<td>29</td>
</tr>
<tr>
<td>3.7 Facility Configuration</td>
<td>30</td>
</tr>
<tr>
<td>3.8 Ownership of Incentives</td>
<td>30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 4 OBLIGATIONS AND DELIVERIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Delivery</td>
<td>30</td>
</tr>
<tr>
<td>4.2 Station Use</td>
<td>31</td>
</tr>
<tr>
<td>4.3 Performance Guarantees; Ancillary Services</td>
<td>31</td>
</tr>
<tr>
<td>4.4 Facility Testing</td>
<td>32</td>
</tr>
<tr>
<td>4.5 Testing Costs and Revenues</td>
<td>33</td>
</tr>
<tr>
<td>4.6 Facility Operations</td>
<td>33</td>
</tr>
<tr>
<td>4.7 Dispatch Notices</td>
<td>34</td>
</tr>
<tr>
<td>4.8 [Intentionally Omitted]</td>
<td>34</td>
</tr>
<tr>
<td>4.9 Energy Management</td>
<td>34</td>
</tr>
<tr>
<td>4.10 Capacity Availability Notice</td>
<td>36</td>
</tr>
<tr>
<td>4.11 Outages</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Allocation of Taxes and Charges</td>
<td>38</td>
</tr>
<tr>
<td>5.2 Cooperation</td>
<td>38</td>
</tr>
<tr>
<td>5.3 Environmental Costs</td>
<td>38</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 Maintenance of the Facility</td>
<td>39</td>
</tr>
<tr>
<td>6.2 Maintenance of Health and Safety</td>
<td>39</td>
</tr>
<tr>
<td>6.3 Shared Facilities</td>
<td>39</td>
</tr>
</tbody>
</table>
ARTICLE 7 METERING ........................................................................................................... 40
  7.1 Metering ............................................................................................................... 40
  7.2 Meter Verification ............................................................................................... 41

ARTICLE 8 INVOICING AND PAYMENT; CREDIT .................................................................... 41
  8.1 Invoicing .............................................................................................................. 41
  8.2 Payment ................................................................................................................ 41
  8.3 Books and Records ............................................................................................ 42
  8.4 Payment Adjustments; Billing Errors .................................................................. 42
  8.5 Billing Disputes ................................................................................................... 42
  8.6 Netting of Payments ........................................................................................... 42
  8.7 Seller’s Development Security .......................................................................... 43
  8.8 Seller’s Performance Security .......................................................................... 43
  8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral .............. 43
  8.10 Buyer’s Financial Statements ......................................................................... 44

ARTICLE 9 NOTICES .............................................................................................................. 44
  9.1 Addresses for the Delivery of Notices ................................................................ 44
  9.2 Acceptable Means of Delivering Notice ......................................................... 44

ARTICLE 10 FORCE MAJEURE ............................................................................................. 45
  10.1 Definition ........................................................................................................... 45
  10.2 No Liability If a Force Majeure Event Occurs .................................................. 46
  10.3 Notice ................................................................................................................ 46
  10.4 Termination Following Force Majeure Event or Development Cure Period .... 46

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION ............................................................. 47
  11.1 Events of Default ............................................................................................... 47
  11.2 Remedies; Declaration of Early Termination Date .......................................... 50
  11.3 Damage Payment; Termination Payment ......................................................... 50
  11.4 Notice of Payment of Termination Payment or Damage Payment .................. 51
  11.5 Disputes With Respect to Termination Payment or Damage Payment .......... 51
  11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date ........................................ 52
  11.7 Rights And Remedies Are Cumulative ............................................................ 52
  11.8 Mitigation .......................................................................................................... 52
  11.9 Seller Pre-COD Liability Limitations ............................................................... 52

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES ........ 52
  12.1 No Consequential Damages .......................................................................... 52
  12.2 Waiver and Exclusion of Other Damages ......................................................... 53

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY ............................. 54
  13.1 Seller’s Representations and Warranties ............................................................ 54
  13.2 Buyer’s Representations and Warranties ........................................................... 55
  13.3 General Covenants ............................................................................................ 56
13.4 Workforce Development ................................................................. 56
13.5 Disadvantaged Communities Development .................................. 56

ARTICLE 14 ASSIGNMENT .................................................................. 56
14.1 General Prohibition on Assignments .............................................. 56
14.2 Collateral Assignment .................................................................... 57
14.3 Permitted Assignment by Seller ...................................................... 57
14.4 Permitted Transfers by Seller ........................................................... 57
14.5 Shared Facilities; Portfolio Financing .............................................. 57
14.6 Buyer Financing Assignment ........................................................... 57
14.7 [Intentionally Omitted] ................................................................. 58
14.8 Accommodation of Tax Equity Investors ........................................ 58

ARTICLE 15 DISPUTE RESOLUTION .................................................. 59
15.1 Governing Law ............................................................................. 59
15.2 Dispute Resolution ........................................................................ 59
15.3 Attorneys’ Fees ............................................................................. 59
15.4 Venue ............................................................................................. 59

ARTICLE 16 INDEMNIFICATION ....................................................... 59
16.1 Indemnification ............................................................................. 59
16.2 Claims ........................................................................................... 60

ARTICLE 17 INSURANCE .................................................................. 60
17.1 Insurance ....................................................................................... 60

ARTICLE 18 CONFIDENTIAL INFORMATION ................................ 62
18.1 Definition of Confidential Information ........................................... 62
18.2 Duty to Maintain Confidentiality .................................................... 62
18.3 Irreparable Injury; Remedies ............................................................ 63
18.4 Further Permitted Disclosure .......................................................... 63
18.5 Press Releases ................................................................................ 63

ARTICLE 19 MISCELLANEOUS ........................................................ 64
19.1 Entire Agreement; Integration; Exhibits ......................................... 64
19.2 Amendments ............................................................................... 64
19.3 No Waiver ................................................................................... 64
19.4 No Agency, Partnership, Joint Venture or Lease ............................... 64
19.5 Severability ................................................................................. 64
19.6 Mobile-Sierra .............................................................................. 65
19.7 Counterparts ................................................................................. 65
19.8 Electronic Delivery ...................................................................... 65
19.9 Binding Effect .............................................................................. 65
19.10 No Recourse to Members of Buyer .............................................. 65
19.11 Forward Contract ........................................................................ 65
19.12 Change in Electric Market Design ............................................... 65
19.13 Further Assurances .................................................................... 66
Exhibits:

Exhibit A Facility Description
Exhibit B Facility Construction and Commercial Operation
Exhibit C Compensation
Exhibit D Scheduling Coordinator Responsibilities
Exhibit E Progress Reporting Form
Exhibit F-1 Form of Monthly Expected Available Effective Capacity Report
Exhibit F-2 Form of Monthly Expected Available Storage Capability Report
Exhibit G Form of Daily Availability Notice
Exhibit H Form of Commercial Operation Date Certificate
Exhibit I Form of Capacity Test Certificate
Exhibit J Form of Construction Start Date Certificate
Exhibit K Form of Letter of Credit
Exhibit L Intentionally Omitted
Exhibit M Form of Replacement RA Notice
Exhibit N Notices
Exhibit O Capacity Tests
Exhibit P Annual Capacity Availability Calculation
Exhibit Q Operating Restrictions
Exhibit R Metering Diagram
Exhibit S Form of Guaranty
Exhibit T Form of Consent to Collateral Assignment
Exhibit U Supply Chain Code of Conduct
Exhibit V Material Permits
Exhibit W Force Majeure Event and/or Development Cure Period Claim Form
ENERGY STORAGE AGREEMENT

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

RECITALS

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

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

WHEREAS, Buyer is entering into the Agreement with the intention that the Facility’s NQC will be counted toward Buyer’s clean energy mid-term reliability procurement obligations set forth in CPUC D.21-06-035 (as may be revised by further decisions);

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 3.6(c).

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

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

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

“Ancillary Meter” has the meaning set forth in Section 7.1(a).

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Annual 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.

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

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

“Auxiliary Use” means the Energy that is used (including Energy used during the charging or discharging of the Facility) within the Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the charging or discharging of the Facility; provided, if Seller demonstrates prior to Commercial Operation to Buyer’s reasonable satisfaction that Station Use is not reasonably likely to exceed Auxiliary Use by more than two percent (2%) in each month, “Auxiliary Use” and “Station Use” shall be deemed to be interchangeable for purposes of this Agreement.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.10 with respect to the Available Effective Capacity and Available Storage Capability, which shall include any updates from Seller with respect to Facility outages or availability as reported to CAISO (including as reported in OMS).
“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 Capacity” has the meaning in Exhibit P.

“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 quotient (expressed as a decimal) of (a) the Charging Energy after reaching 100% SOC or the first five (5) hours of the charging phase of the applicable Capacity Test, as applicable, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“Battery Discharging Factor” means the quotient (expressed as a decimal) of (a) the Facility Energy after the first four (4) hours of the discharging phase of the applicable Capacity Test, divided by (b) the Installed Capacity x four (4) hours MWh, not to exceed one (1).

“BESS Equipment” means batteries, battery modules, onboard sensors, control components, inverters, transformers, or any of their components.

“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 Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.4(c).

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

“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 or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the 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-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(ii).

“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.

“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 charge or discharge 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 Availability Payment True-Up” has the meaning set forth in Exhibit C.

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

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

“Capacity Test” or “CT” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity or any other test conducted pursuant to Exhibit O.

“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) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided further, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

“Charging Energy” means all Energy delivered to the Delivery Point pursuant to a Charging Notice, as measured by the Facility Meter.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the 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 instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

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

“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 Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.6(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.6.

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

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

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

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Price” means the CPM Soft Offer Cap (or its successor).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC-Penalized Shortfall” has the meaning set forth in Section 3.5(b)(i).

“CPUC System RA Penalty” means the penalties for “System Procurement Deficiency” adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

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

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

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

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

“**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 set forth in Section 11.3(a).

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

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

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

“**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 specified for the Development Security on the Cover Sheet.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh. Any instruction to discharge the Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.
“Disclosing Party” has the meaning set forth in Section 18.2.

“Dispatch Notice” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Facility Energy at a specific MW level to a specified Stored Energy Level; provided, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff. Dispatch Notices may be communicated electronically (i.e. through ADS, AGC or e-mail), or telephonically, in accordance with the procedures set forth in Section 4.7. Telephonic or other verbal communications may be documented (either recorded by tape, electronically or in writing) without further notification to, or consent being required from, either Party with respect to such Party being recorded by the other, including by Buyer’s designated Scheduling Coordinator.

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

“Effective Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“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.

“Efficiency Rate” means the rate calculated as the quotient of (a) the sum of (i) Facility Energy plus (ii) Idle Period Auxiliary Use for which Seller is required to reimburse Buyer, divided by (b) Energy In, based on actual Facility operations for each applicable month, adjusted to reflect the nearest Facility Energy and Energy In values that would have resulted in equal Stored Energy Levels at the beginning of the first Calculation Interval and the end of the last Calculation Interval of such month.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility associated with delivery of Charging Energy, and (b) between the Facility and the Delivery Point associated with delivery of Facility Energy.

“Emission Reduction Credits” or “ERCs” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain
future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

“Energy In” means the total Energy delivered by Buyer to the Delivery Point pursuant to one or more Charging Notices as measured at the Facility Meter (without adjusting for Electrical Losses or Station Use).

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

“Energy Out” means the total Energy delivered to the Delivery Point pursuant to one or more Discharging Notices during the relevant period as recorded by the CAISO.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

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

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

“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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Energy” means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice, as measured by the Facility Meter, net of Electrical Losses and Station Use. All Facility Energy shall have originally been delivered to the Facility as Charging Energy.

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

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

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

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

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

“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.

“GHG Regulations” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.
“**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.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

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

“**Guaranteed Capacity Availability**” has the meaning set forth in Section 4.3.

“**Guaranteed Commercial Operation Date**” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” has the meaning on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Efficiency Rate**” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“**Guarantor**” means, with respect to Seller, any Person that (a)(i) is NextEra Energy Capital Holdings, Inc. (provided it is an Affiliate of Seller), or other third party reasonably acceptable to Buyer or (ii) has an Investment Grade Credit Rating, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) 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.

“**High Operating Limit**” or “**HOL**” means a real-time calculated number representing the instantaneous maximum power level at which the Facility can discharge Facility Energy to the Delivery Point, as communicated via the EMS.

“**Idle Period Auxiliary Use**” means Auxiliary Use consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice for which Seller does not pay retail rates to its retail electric utility provider.

“**Imbalance Energy**” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Facility Energy deviates from the amount of Scheduled Energy.
“Incentives” means: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, ITCs, and other credits under Sections 38, 45, 46, 48 and 48E 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; and (c) any other form of incentive relating in any way to the Facility that is not any (a) Capacity Attribute, (b) Ancillary Services, or (c) future environmental attributes (except to the extent related to the items which Seller is responsible for under Section 5.3 which shall be Incentives) or future energy attributes.

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

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

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

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

“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 Interconnection Facilities that are used by the Facility 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 from the Facility to the Delivery Point under the Interconnection Agreement, in the amount of 190 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.
“Investment Grade Credit Rating” means a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s.

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

“ITC” means the investment tax credit established pursuant to Section 48 or 48E of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.


“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, having assets of at least $10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“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.

“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 Incentives.

“Low Operating Limit” or “LOL” means a real-time calculated number representing the instantaneous maximum power level at which the Facility can charge Energy to the Facility, as communicated via the EMS.

“ Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

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

“Material Permits” means all permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to commence construction, as set forth on Exhibit V.

“Milestones” means the 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 Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.10(a).

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

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

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

“NEECH” has the meaning set forth in the definition of Affiliate.

“NEER” means NextEra Energy Resources, LLC.

“NEOP” has the meaning set forth in the definition of Affiliate.

“NEP” has the meaning set forth in the definition of Affiliate.

“NERC” means the North American Electric Reliability Corporation or any successor entity.

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

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

“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, next Business Day courier service, or electronic messaging (e-mail).

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

“Outage Management System” or “OMS” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 4.11(a)(i).

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

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

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

“Permitted Transfer” means each of the following transactions:

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

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

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

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

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

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

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NEP, NEOP and NEECH, and their respective direct or indirect subsidiaries.

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

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.11(a).

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

“PMIN” means the applicable CAISO-certified minimum operating level of the 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 Financing” means any tax equity or debt transactions entered into by an Affiliate of Seller that is secured only by a Portfolio.

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

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

“Production Tax Credits” or “PTCs” means production tax credit under Section 45 or 45 Y of the Internal Revenue Code as in effect from time-to-time throughout the Contract Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

“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 energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Qualified Operator” means Seller or an operator of energy storage facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more battery energy storage facilities having a nameplate capacity rating of ten (10) MW and/or two (20) MWh or more, for not less than two (2) years

“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 as calculated in accordance with Section 3.5(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Plan” has the meaning set forth for “Resource Adequacy Plan” in the CAISO Tariff with respect to Buyer’s monthly or annual Resource Adequacy Benefits showings.

“RA Shortfall” means, for a given Showing Month, the positive difference, if any, expressed in kW, of (a) the product of (i) the Facility’s Qualifying Capacity minus (b) the sum of (i) the portion of the Net Qualifying Capacity of the Facility for such month which is able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC plus (ii) Replacement RA provided by Seller with respect to an expected shortfall in Resource Adequacy Benefits of the Facility for such Showing Month, if applicable.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any month shown on an RA Plan, commencing with the RA Plan for the Showing Month that includes the RA Guarantee Date (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility’s Resource Adequacy Benefits or any Replacement RA, if applicable), for which there is an RA Shortfall.

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

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

“Reimbursable Station Use” means all Station Use, except (a) to the extent Seller has been invoiced for such Station Use by the electric utility as retail energy, and (b) Auxiliary Use that is consumed by the Facility during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

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

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

“Replacement RA” means resource adequacy benefits equivalent to Resource Adequacy Benefits (including satisfying the same Slice-of-Day, battery energy storage system profile and related characteristics) 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, 20-06-031, 20-12-006, 21-06-029, 21-07-014, 22-03-034, 22-06-050, 22-12-028, 22-08-039, 23-04-010 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 Charging Energy or Facility 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.

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

“Seller Board Approval Deadline” has the meaning set forth in Section 2.1(c).

“Seller Initiated Test” has the meaning set forth in Section 4.4(c).

“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; provided, the Parties agree that the value of Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

“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 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 Stored Energy Level relative to (b) the Effective Capacity multiplied by four (4) hours, expressed as a percentage. The “SOC” shall represent the range of Stored Energy Level reserved exclusively for Buyer’s use; provided, Seller may represent such range anywhere within the actual available capability of the Facility.

“SOD” or “Slice-of-Day” has the meaning set forth in the Resource Adequacy Rulings.

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

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

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

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

“Storage Capability” has the meaning in Exhibit P.

“Storage Rate” has the meaning set forth on the Cover Sheet; provided, if the officer’s certificate provided by Seller pursuant to Section 2.2(i) states that the ITC rate for the Facility is higher than Seller’s assumed ITC rate as set forth on the Cover Sheet, the Storage Rate shall be reduced by $ per kW-mo. for each one (1) percentage point that the claimed ITC rate is above forty percent (40%); provided further, in the event of any reduction of the Storage Rate pursuant to the previous proviso, with respect to the first five (5) Contract Years, if the IRS rejects or reduces the claimed ITC applicable to the Facility above forty percent (40%) within the twelve (12)-month period following each such Contract Year, Buyer shall reimburse Seller the difference between such reduced payments for the immediately prior Contract Year (but not for any other prior Contract Years) through the date of such final adjustment by the IRS within thirty (30) days of Notice by Seller, and the Storage Rate shall immediately be modified to be based on the then-current ITC rate as approved by the IRS (but in no event higher than the original Storage Rate).

“Stored Energy Level” means, at a particular time, the amount of Energy in the Facility available to be discharged to the Delivery Point as Facility 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 ITC, PTC, and any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of clean or renewable energy and/or investments in clean or 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.

“**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.


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

“**Unplanned Outage**” means a period during which the Facility is unavailable to provide some or all of the Product due to the need to maintain or repair a component of the Facility, which period is not a Planned Outage.

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, subject to Buyer’s obligations in Section 4.9(g), 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) [Intentionally Omitted].

(c) If Seller has not received all approvals of the management and board of directors (or equivalent governing body) of Seller and its Affiliates, including, if applicable, the approval of the board of directors of NextEra Energy, Inc. or a committee thereof, as Seller determines in its sole discretion are required under its and their respective constituting documents for the performance by Seller of its obligations under this Agreement ("Seller Board Approval"), on or before May 31, 2024 (the "Seller Board Approval Deadline"), then Seller may elect to terminate this Agreement by providing written notice of termination to Buyer within ten (10) Business Days after the Seller Board Approval Deadline. If this Agreement is terminated by Seller pursuant to this Section 2.1(c), then, within five (5) Business Days of the date of such notice of termination, Seller shall pay to Buyer an amount equal to  of the Development Security amount, which shall be Buyer’s sole and exclusive remedy associated with such failure to obtain the Seller Board Approval and related termination. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(d) and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

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

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer’s rejection thereof as soon as reasonably practicable, but in any event within five (5) Business Days of receipt thereof:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;
(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller (or Seller’s Affiliate) 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; The Facility is providing Resource Adequacy Benefits for the month in which Delivery Term commences;

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

(h) Seller (with reasonable assistance from Buyer) has taken all actions and executed all documents and instruments to be performed and/or signed by Seller, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement and Seller has taken the actions required by Seller under Section 2.6 and the CAISO Tariff in order for Buyer (or its designated agent) to be able to dispatch the Facility for the Commercial Operation Date;

(i) Seller has delivered to Buyer an officer’s certificate stating (i) that Seller has complied with Section 2.3(b), and (ii) the ITC rate which Seller claims will apply for the Facility; and

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

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
(b) Seller shall use commercially reasonable efforts to ensure that all materials, products and components used in the batteries and inverters for the Facility (the “Major Equipment”) comply with the Supply Chain Code. Seller shall use commercially reasonable efforts to implement reasonable due diligence procedures to verify compliance by Seller, its Affiliates and its Major Equipment suppliers with the Supply Chain Code, and Seller shall promptly notify Buyer if Seller becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

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

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

2.5 Pre-Commercial Operation Actions. The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of a Dispatch Notice and nominating and scheduling the Facility for the Commercial Operation Date, in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date. Seller shall give Buyer at least forty-five (45) days’ Notice before the Commercial Operation Date.

ARTICLE 3
PURCHASE AND SALE

3.1 Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer, when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security
interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

3.2 **Facility Energy.** Except for Facility Energy resulting from a Seller Initiated Test, Seller commits to make available the Facility Energy to Buyer, and Buyer shall have the exclusive rights to all Facility Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services and Associated Ancillary Services Energy, with characteristics and quantities determined in accordance with the CAISO Tariff. Upon a request by Buyer, the Parties shall negotiate in good faith to modify the terms of this Agreement (which may include modification of the Storage Rate and/or other financial factors) for the Facility to be able to provide Black Start (as defined in the CAISO Tariff) or any other Ancillary Services not listed Exhibit Q.

3.4 **Capacity Attributes.** Seller shall diligently pursue 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 3.6, 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 3.6, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, and subject to Section 3.6, 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 3.6, 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 an amount up to the expected RA Shortfall (ignoring the provision of Replacement RA for purposes of quantifying such “expected RA Shortfall”) 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.
3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as set forth in Section 3.5(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** The "**RA Deficiency Amount**" shall equal to the sum of the following (for which Buyer shall provide reasonable documentation):

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**CPUC-Penalized Shortfall**"), Seller’s pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall ("**CAISO-Penalized Shortfall**") Seller’s pro rata share of the amount of such CAISO costs, charges or penalties associated with the Facility RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any portion of the RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, the amount of Buyer’s cost of such replacement Resource Adequacy Benefits, plus

(iv) For any portion of the RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the prevailing market value of such RA Shortfall, determined by Buyer in a commercially reasonable manner;
3.6 **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 with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses (“Compliance Costs”) Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

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

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.6(c) 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.

(e) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in Law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the change in Law, and (iii) with respect to Resource Adequacy, the Net Qualifying Capacity shall be
adjusted downward to reflect the effect of the change in Law.

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

3.8 **Ownership of Incentives.** Seller shall have all right, title and interest in and to all Incentives. Buyer acknowledges that any Incentives belong to Seller. If any Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such 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 Incentives.

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 (except as otherwise set forth in this Agreement), if any, imposed in connection with: (a) the delivery of Charging Energy to the Delivery Point (including the cost of the Charging Energy itself) and (b) the acceptance and transmission of Facility Energy at and from the Delivery Point, including without limitation, transmission costs and transmission line losses with regard to (a) and (b). The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D. To the extent Seller elects, or the Facility is required, to be a Scheduling Coordinator Metered Entity, in consideration of Buyer’s performance of its obligation to submit Settlement Quality Meter Data for the Facility to CAISO in accordance with Exhibit D ("SQMD Reporting"), Seller shall pay or cause to be paid to Buyer Five Hundred Dollars ($500) each month for which Buyer provides SQMD Reporting ("Monthly SQMD Charge"). If (a) Seller elects to withdraw its SQMD Plan for the Facility and as a result Buyer no longer has an obligation to submit Settlement Quality Meter Data for the Facility to CAISO in accordance with Exhibit D, or (b) the Parties mutually agree in their sole discretion to allow a third party selected by Seller to submit such Settlement Quality Meter Data to CAISO, then as of the later of (i) the date Seller provides Notice of such election to Buyer, and (ii) the effective date that any such change is approved by the CAISO (to the extent required), Buyer shall no longer provide any such SQMD Reporting and the Monthly SQMD Charge will terminate.
4.2 **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) during charging and discharging of the Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use may be served by Charging Energy or Facility Energy, (b) 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 such Station Use) except for Auxiliary Use during periods of charging or discharging pursuant to a Charging Notice or Discharging Notice, (c) the supply of Auxiliary Use shall not be deemed a violation of this Agreement, including Sections 4.9(c), (d), and (f), and (d) Seller shall reimburse Buyer for all Reimbursable Station Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer (i.e. originally delivered as Charging Energy) is used by Seller for Station 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).

4.3 **Performance Guarantees; Ancillary Services.**

(a) During the period commencing upon CAISO Commercial Operation and continuing throughout the Delivery Term, the Facility shall maintain an Annual Capacity Availability during each Contract Year (and during the period from CAISO Commercial Operation through the Commercial Operation Date) of no less than **[redacted]** for each Contract Year (the “**Guaranteed Capacity Availability**”), which Annual Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. The Guaranteed Capacity Availability and Guaranteed Efficiency Rate are collectively the “**Performance Guarantees**”.

(c) Buyer’s remedies for Seller’s failure to achieve the Performance Guarantees are (i) the Monthly Capacity Payment adjustment and/or Capacity Availability Payment True-Up, as applicable, as set forth in Exhibit C, and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iii) with respect to the Guaranteed Capacity Availability, the applicable remedies set forth in Article 11.

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

(e) Upon Buyer’s reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 conducting such additional CAISO Certification.

4.4 **Facility Testing.**

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

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

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

(iii) If Seller fails to conduct a Storage Capacity Test prior to the commencement of a Contract Year in accordance with Exhibit O, Buyer shall have the right, in its sole discretion, to retroactively apply, for all purposes of this Agreement, the results of the next Storage Capacity Test once completed back to the later of: (A) the first day of the applicable Contract Year, or (B) the date that is two (2) months prior to Buyer providing notice to Seller of such failure to conduct the applicable Storage Capacity Test.

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

(c) **Buyer or Seller Initiated Tests.** Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Capacity Tests, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test is below seventy percent (70%) of the Installed 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 Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “Seller Initiated Test.”

(i) For any Seller Initiated Test other than a Capacity Test 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 Dispatch 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. The Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Facility during such Seller Initiated Test. The Facility will not be deemed unavailable during any Buyer Dispatched Test, except to the extent it is actually unavailable to perform the Buyer-instructed dispatches of the Facility during such Buyer Dispatched Test as would otherwise be determined under this Agreement.

4.5 **Testing Costs and Revenues.**

(a) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Facility and Buyer shall be entitled to all CAISO revenues associated with a 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 Charging Energy for such Seller Initiated Test, and (2) 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.

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

(c) If Buyer requests any additional Buyer Dispatched Test between annual Capacity Tests and the Effective Capacity resulting from such additional Capacity Test increases, or decreases by less than one percent (1%), from the then-current Effective Capacity, then Buyer shall either, in its sole discretion, **blacked out**

(d) Except as set forth in Sections 4.5(a), (b) and (c), as applicable, all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) Seller shall operate the Facility to automatically follow Automatic Generation Control such that the Facility can receive continuous instruction on a 4-second basis.

(c) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(b) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain accurate records with respect to all Capacity Tests.
(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement. Subject to the Operating Restrictions, each Dispatch Notice will be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If an electronic submittal is not possible for reasons beyond Buyer’s control, Dispatch Notices may be provided (in order of preference) telephonically or by electronic mail to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the CAISO Tariff.

4.8 [Intentionally Omitted]

4.9 **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 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 Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Notices.** Buyer will have the right to charge the 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 CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the 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 Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the 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 4.9(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and other benefits (including Product) associated with such discharge.
(d) **No Unauthorized Discharging.** Seller shall not discharge the 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. Buyer shall have the right to discharge the 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. 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) **Unauthorized Charges and Discharges.** If Seller or any third party charges, discharges or otherwise uses the Facility other than as permitted hereunder or as expressly addressed in Section 4.9(f), 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 the failure to implement such procedures shall be an Event of Default under Article 11.

(f) **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 4.9 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties (including Imbalance Energy charges) resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Facility as set forth in Section 4.9(c)), except to the extent such deviation is due to incorrect information received from the CAISO or a CAISO Dispatch that conflicts with the Operating Restrictions or the Master File. To the extent the Facility is unable to respond to ADS signals during any Calculation Interval (except to the extent caused by the CAISO), 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.

(g) **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 charge and discharge the Facility (provided, Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the 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 Facility testing shall be for Seller’s account. Upon CAISO Commercial Operation, Buyer or its designated SC shall be the Scheduling Coordinator for the Facility, and 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 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.

(h) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with the operational procedures.

4.10 Capacity Availability Notice.

(a) 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 Available Effective Capacity, and (ii) Available Storage Capability, for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable (“Monthly Forecast”).

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Effective Capacity that the Facility is expected to have for each hour of such schedule day (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) (the “Availability Notice”). Seller shall provide Availability Notices (including updated Availability Notices) in a mutually agreeable form, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Effective Capacity of the Facility (including, in each case, as such availability may be adjusted as required by the CAISO Tariff for reporting to CAISO) changes or is expected to change after Buyer’s receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer’s reasonable requests for changes in the time of delivery of Availability Notices.

4.11 Outages.

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Guaranteed Commercial Operation Date, Seller shall submit to Buyer Seller’s schedule of proposed Planned Outages (“Outage Schedule”) for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with
Prudent Operating Practices, accommodate Buyer’s requests regarding the timing of any Planned Outage. Seller may propose changes to any previously Planned Outage fifteen (15) days prior to such Planned Outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer’s receipt thereof, in Buyer’s sole discretion but consistent with Prudent Operating Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Planned Outages with the CAISO. Seller shall communicate to Buyer all changes to a Planned Outage and estimated time of return of the Facility as soon as practicable after the condition causing the change becomes known to Seller.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.11(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 use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.11(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.11(a)(ii), no outages 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 or required to maintain equipment warranties that could not be scheduled outside such months. 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.

(c) **Notice of Unplanned Outages.** Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(d) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection, Buyer shall be responsible for having provided commercially reasonable insurance for such Buyer personnel, and shall not interfere with work on or operation of the Facility.

(e) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws.
ARTICLE 5
TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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 Environmental Costs. Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller’s obligations listed under “Compliance Obligation” in the GHG Regulations, and

All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other federal, state or local legislation to offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller...
ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 Maintenance of the Facility.

(a) 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 applicable Law and Prudent Operating Practices relating to the operation and maintenance of the Facility. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer’s scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

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, including through shared ownership of, or possessing contractual right from, an Affiliate that is the interconnection customer under the Interconnection Agreement or the owner of any Shared Facilities and Interconnection Facilities; 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 ID, and (iv) provide that in the event of any discretionary allocation of curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus the Interconnection Capacity Limit.
ARTICLE 7  
METERING

7.1 Metering

(a) Seller shall measure the amount of Charging Energy and Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter (i) all Station Use and (ii) to the extent Station Use is expected to be, on average over any month, more than 2% greater than Auxiliary Use, all Auxiliary Use using one or more revenue-grade meters (collectively, the “Ancillary Meter”). The Facility Meter and Ancillary Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost. If Seller elects to submit a SQMD Plan for the Facility, then the Facility Meter(s) will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, at Seller’s sole cost, throughout the period to which the SQMD Plan applies. Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the 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, as may be revised to be consistent with any CAISO-approved SQMD Plan. Each meter shall be kept under seal, such seals to be broken only when the Facility Meters and/or Ancillary Meter, as applicable, 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 Facility Meter and Ancillary Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan. 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-Selizations (MRI-S) web and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan.

(b) Section 7.1(a) is based on the Parties’ mutual understanding as of the Effective Date that (i) the CAISO requires the Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement and (ii) 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) or (ii) 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 Facility Meter malfunction, or upon Buyer’s reasonable request, Seller shall test the Facility 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 Facility 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 Facility 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 Facility 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; *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 reflect (a) 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 Charging Energy, Reimbursable Station Use and the amount of Facility Energy, in each case as read by the Facility Meter, Energy In, Energy Out, and the amount of Replacement RA delivered to Buyer (if any) 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 of Monthly Capacity Payments for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the
Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds $10,000.

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or
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. Subject to this Section 8.7 and the other terms of this Agreement governing Seller’s Development Security requirements, Seller may change the type and/or issuer (as applicable) of the Development Security from time to time and at any time. For avoidance of doubt, Seller shall have no replenishment obligation with respect to the 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 of Guaranty 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) 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); provided, in no event shall Seller have any obligation to replenish the Performance Security to the extent that the total aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds two (2) times the amount of the original Performance Security. Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Subject to this Section 8.8 and the other terms of this Agreement governing Seller’s Performance Security requirements, Seller may change the type and/or issuer (as applicable) of the Performance Security from time to time and at any time.

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’s Financial Statements.** From the Effective Date, unless such financial statements are available on the internet at https://www.cleanpoweralliance.org/, if requested in writing by Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of the end of each quarter, and audited annual financial statements within one hundred eighty (180) days after the end of each fiscal year. Buyer’s financial statements shall have been prepared in accordance with GAAP, provided that Buyer’s quarterly budget-to-actual reports are not prepared in accordance with GAAP. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

**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 next Business Day 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 the claiming Party; provided, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

(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, pandemic or plague; landslide; mudslide; sabotage or vandalism; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; 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 Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any
Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days after the date the claiming Party became (or reasonably should have become) aware of the claimed Force Majeure Event, must (a) give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit W, (b) provide information reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) 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 provide Notice within such fourteen (14)-day period constitutes a waiver of the Force Majeure Event with respect to the period starting the date after such Notice is due, and continuing until the date that the Notice is provided.

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) plus the payment of Commercial Operation Delay Damages equal or exceed two hundred seventy (270) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that Seller’s failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller to two hundred seventy (270) days of Development Cure Period delays but for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Sections 2.1(c) and 11.6, and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its 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(d) 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 3.5, and (B) failures related to the Annual Capacity Availability that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Exhibit C and Exhibit P), (C) failures related to the Annual Capacity Availability or Guaranteed Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.3) and (D) failures related to the timely provision of Settlement Quality Meter Data consistent with the SQMD Plan, the exclusive remedies for which are set forth in the last sentence of Exhibit D, Section (i), 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 discharged by the Facility;

(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 Contract Year, __________ Annual Capacity Availability multiplied by the Effective Capacity for the applicable period is less than seventy percent (70%) multiplied by the Installed Capacity, and Seller fails to (x) deliver to Buyer within thirty (30) 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 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 (unless the cure plan requires: (i) replacement of at least fifty percent (50%) of the battery capacity; (ii) replacement of at least fifty percent (50%) of the inverter capacity or sub-inverter capacity; and/or (iii) replacement of the generator step-up transformer (the GSU), in which case the time to cure shall not exceed three hundred sixty-five (365) days total) (a “Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

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

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

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

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

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

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

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

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

(vi) 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;

(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.
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 equal to the Development Security amount plus, if the Development Security is posted as cash, any interest accrued thereon. If Seller has not paid the Damage Payment, and the amount of Development Security held by Buyer is not equal to the Damage Payment amount, then Buyer may liquidate the Development Security and the remainder of the Damage Payment shall be immediately due and payable to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility,
less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

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

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

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.
11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If the Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following such early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

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 HEREBUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 11.2, 11.3 AND 11.9, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

(b) Seller has the power and authority to enter into and, subject to the Seller Board Approval, perform this Agreement and is not prohibited from entering into this Agreement or, subject to the Seller Board Approval, 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, subject to the Seller Board Approval, 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) Seller reasonably believes that, despite Seller and/or its Affiliates having received notices or advisements from existing or potential suppliers or service providers on or prior to the Effective Date regarding delays in the delivery of materials and/or services due to COVID-19, neither Seller nor its Affiliates are aware of any conditions or circumstances evidenced in any such notice or advisement that are reasonably likely to cause a delay in (i) achieving the Construction Start by the Guaranteed Construction Start Date, or (ii) achieving Commercial Operation by the Guaranteed Commercial Operation Date. Notwithstanding anything to the contrary in this Agreement, Buyer’s only remedy for any breach of this representation by Seller
shall be that Seller may not claim relief under Article 10 for a Force Majeure Event or Section 4 of Exhibit B for a Development Cure Period on the basis of such delays.

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.
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 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. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller’s compliance with the requirements of this Section 13.4; provided, a Seller’s officer’s certificate certifying Seller’s full compliance with the requirements of this Section 13.4 shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence.

13.5 **Disadvantaged Communities Development.** Within thirty (30) days after the Effective Date, Seller shall pay to Buyer one hundred fifty thousand dollars ($150,000) for Buyer to use for community benefits as determined by Buyer in its sole discretion.

**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 (if applicable), or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review,
execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

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

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

(a) the assignee is a Permitted Transferee;

(b) Seller gives Buyer Notice of such transfer or assignment within fifteen (15) Business Days before the date of such proposed transfer or assignment; and

(c) 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 **Permitted Transfers by Seller**. Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such Permitted Transfer.

14.5 **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.

14.6 **Buyer Financing Assignment**. Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“Buyer Assignee”) at any time upon not less than fifteen (15) Business Days’ notice by delivering Notice of such assignment, which notice must include a
proposed assignment agreement (the “Limited Assignment Agreement”), the form of which Limited Assignment Agreement the Parties will work together in good faith to agree upon if/when Buyer in good faith believes the Facility may qualify for a municipal prepayment financing transaction and provides a Notice to Seller requesting that the Parties work together with respect to the preparation and agreement to such a form, which form shall be subject to the provisions set forth in the remainder of this Section 14.6 unless otherwise agreed to in writing by each of the Parties. 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 (the “Required Credit Rating”). As reasonably requested by each of Buyer Assignee and Seller, each shall (i) provide the other with information and documentation with respect to it, including but not limited to 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 in the case of Seller, account opening information and information related to the forecasting requirements set forth in this Agreement; and (ii) Seller shall 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 14.6 and the form of the Limited Assignment Agreement; provided, (i) nothing in the Assignment Agreement shall modify any provision of this Agreement; (ii) PPA Buyer remains obligated to perform all its obligations under this Agreement (including without limitation any such obligations not timely performed by Buyer Assignee under the Assignment Agreement) and any failure by Buyer Assignee to make payments to Seller when due under the Agreement shall be a Buyer Event of Default if not cured within the applicable cure period specified herein; (iii) the Assignment Agreement shall not purport to convey or otherwise allege any right of Buyer or Buyer Assignee to make any prepayment to Seller under this Agreement or to file or impose any lien on the Facility; (iv) neither Limited Assignee nor Buyer shall make any assignment of its rights or delegation of its obligations under the Assignment Agreement without the prior written consent of Seller; (v) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties; (vi) Buyer shall reimburse Seller for all out-of-pocket expenses reasonably incurred by Seller in excess of five thousand dollars ($5,000) (but not to exceed ten thousand dollars ($10,000) of reimbursable expenses) as a result of such assignment by Buyer; and (vii) Buyer Assignee and PPA Buyer shall comply with all reasonable requests from any Lender in connection with the Limited Assignment Agreement, including in connection with any Consent to Collateral Assignment Agreement.

14.7 [Intentionally Omitted].

14.8 Accommodation of Tax Equity Investors. Buyer will, as soon as reasonably practicable after request, cooperate reasonably with Seller and any tax equity investor of Seller or a parent of Seller involving the Facility or this Agreement to provide such consents to assignments, estoppels, certifications, representations, information or other documents as may be reasonably requested by Seller or such tax equity investor in connection with any financing or assignment involving the Facility or this Agreement.
ARTICLE 15
DISPUTE RESOLUTION

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

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys’ fees in connection with said action.

15.4 Venue. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

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

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “IP Indemnity Claim”).
Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Ten Million Dollars ($10,000,000) per occurrence, and an annual aggregate of not less than Ten Million Dollars ($10,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000) per occurrence and in aggregate. 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. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(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) Builder’s All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder’s all-risk insurance covering the Facility during such construction periods.

(f) Property Damage Insurance. Seller shall maintain or cause to be maintained during the Delivery Term, property damage insurance with a policy limit of not less than the full replacement cost of the Facility on a per occurrence basis.

(g) Pollution Liability Insurance. Seller shall maintain or cause to be maintained during the Contract Term, pollution liability insurance in an amount not less than Two Million Dollars ($2,000,000) each occurrence covering losses involving hazardous material(s) and caused by pollution incidents or conditions that arise from any subcontractor’s performance or lack of performance of work under this Agreement, or might be required by federal, state, regional, municipal, and local laws, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. If such coverage is on a “claims made” policy form, any applicable “retroactive date” shall be no later than the Effective Date and shall be maintained for at least two (2) years beyond the termination of this Agreement, to allow for a reasonable extended reporting period.

(h) 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 (h)(i) and (h)(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(h).

(i) 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.

(j) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

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 (including bona fide prospective 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. Notwithstanding the foregoing, and for clarification purposes, the Parties acknowledge that Buyer and on or more Affiliates of Seller are parties to separate power purchase agreements, for different facilities, and this Agreement is separate and distinct from those other agreements, and nothing in this Agreement shall have any effect on, including without limitation for collateral estoppel, admission, waiver, or any other purpose, those other agreements or any issues within those other agreements. Similarly, to the extent of any open issues under those other agreements, each of the Parties to this Agreement expressly reserves and retains its rights with respect to such open issues under this Agreement. 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.

KEY ENERGY STORAGE, LLC

By: ________________________
Name: ________________________
Title: ________________________

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

By: ________________________
Name: ________________________
Title: ________________________
Site Name: Key Energy Storage

Site includes all or some of the following APNs: 085-040-58S, 085-040-36S, 085-040-37S

City: N/A (Unincorporated Fresno County)

County: Fresno

Zip Code: 93210

Latitude and Longitude: 36.136214, -120.132172

Facility Description: A standalone battery energy storage facility with a net nameplate capacity of 190 MW / 760 MWh located in unincorporated Fresno County, California. The Facility is a portion of a larger 300 MW (mixed 4-hour and 8-hour) energy complex (i.e., the Facility comprises 190 MW/300 MW of the energy complex). Seller may install additional inverter capacity to account for production and delivery losses.

Delivery Point: The P-node for the Facility (as defined below)

Facility Meter: See Exhibit R

Facility Metering Points: See Exhibit R

P-node: To be established prior to the Commercial Operation Date at the Gates 500 kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

Transmission Provider: Pacific Gas and Electric

Additional Information: None

* Seller represents the APNs identified above are sufficient for Seller to build the Facility. Seller may add additional APNs without the consent of Buyer.
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

   (a) “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors, and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, beginning of either the excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Subject to the other terms of this Agreement, Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   (b) Seller may extend the Guaranteed Construction Start Date (in addition to any extensions pursuant to a Development Cure Period) 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 (which may have already been extended due to a Development Cure Period, or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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 Seller achieves Commercial Operation after 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), but in fewer days than the number of days by which Seller missed the Guaranteed

Exhibit B - 1
Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), then Buyer shall refund to Seller an amount equal to fifty percent (50%) of the Daily Delay Damages for the difference between (i) the number of days by which Seller missed the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), minus (ii) the number of days by which Seller missed 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 any Development Cure Period). For illustrative purposes only, if Seller misses the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller’s payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period) by ten (10) days, but only misses the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but accounting for any extensions to such date pursuant to any Development Cure Period) by four (4) days, then Buyer shall refund to Seller an amount equal to fifty percent (50%) of six (6) days’ worth of Daily Delay Damages.

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) Subject to the other terms of this Agreement, 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) In addition to any extensions pursuant to any Development Cure Period, 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 (which may have already been extended due to a Development Cure Period or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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 (subject, however, to Buyer’s and/or Seller’s ability to terminate this Agreement in accordance with the provisions of Section 10.4(a)).

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, both be extended on a day-for-day basis (the “**Development Cure Period**”) (provided, the Guaranteed Construction Start Date shall not be adjusted retroactively if the Construction Start Date has already occurred) 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 including commercially reasonable efforts to make up time from any such delays; provided, Seller shall not be entitled to more than one (1) day of Development Cure Period delay for a single day on which more than one of the conditions in (a)-(c) below occur concurrently:

   (a) Seller has not acquired (i) the conditional use permit by the Expected Construction Start Date, or (ii) all other Material Permits within sixty (60) days following the Expected Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

   (b) a Force Majeure Event occurs; or

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

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

Seller shall submit any claim for Development Cure Period delays (x) within five (5) Business Days of (i) missing the applicable milestone date in the case of Sections 4(a) or (c) above or (ii) Seller becoming aware of the delays pursuant to Section 4(d) above, (y) concurrently with Seller’s claim of a Force Majeure Event in the case of (b) above, and (z) within fourteen (14) days after Seller becomes aware of any **provided**, Seller’s failure to submit such Development Cure Period claim within such applicable period constitutes a waiver of such Development Cure Period starting the date after such notice is due, and continuing until the date that the submission is provided in substantially the form set forth in Exhibit W; provided further, Seller shall be entitled to revise any such claim to, among other things, reflect additional days of Development Cure Period which occur after the submission of any such claims. 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 (i) one hundred eighty (180) days with respect to the Guaranteed Construction Start Date, and (ii) one hundred eighty (180) days with respect to the Guaranteed Commercial Operation Date, 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) with respect to the Guaranteed Commercial Operation Date (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to [Insert Calculation] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. 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, subject to the limitation set forth in Section 11.9.
EXHIBIT C

COMPENSATION

(a) Monthly Compensation.

(i) Each month from the period commencing upon CAISO Commercial Operation and continuing throughout 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 one thousand (1,000) x Effective Capacity x Efficiency Rate Factor minus an amount equal to Buyer’s monthly average cost for Charging Energy multiplied by the total number of MWhs of Reimbursable Station Use in such month, divided by the Efficiency Rate. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity is adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective 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) x .5]

(C) If the Efficiency Rate is less than 75%, then:

Efficiency Rate Factor = 0

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

“Capacity Availability Payment True-Up Amount” means an amount equal to A x B – C - D, where:

A = The sum of the year-to-date Monthly Capacity Payments
B = The Capacity Availability Factor
C = The sum of any Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year (or for the period from CAISO Commercial Operation through the Commercial Operation Date).

“Capacity Availability Factor” means:

(i) If the product of (A) the YTD Annual Capacity Availability times (B) the Effective Capacity is equal to or greater than the product of (C) the Guaranteed Capacity Availability times (D) the Effective Capacity, then:

Capacity Availability Factor = 0

(ii) If the product of (A) the YTD Annual Capacity Availability times (B) the Effective Capacity is less than the product of (C) the Guaranteed Capacity Availability times (D) the Effective Capacity, but the product of (X) the sum of (1) the YTD Annual Capacity Availability plus (2) Force Majeure Unavailability, times (Y) the Effective Capacity is greater than or equal to seventy percent (70%) of the Installed Capacity, then:

Capacity Availability Factor = Guaranteed Capacity Availability – YTD Annual Capacity Availability

(iii) If the product of (A) the sum of (1) the YTD Annual Capacity Availability plus (2) Force Majeure Unavailability, times (B) the Effective Capacity is less than seventy percent (70%) of the Installed Capacity, then:

Capacity Availability Factor = (Guaranteed Capacity Availability – YTD Annual Capacity Availability) * 1.5 – (Force Majeure Unavailability * 0.5)
provided, if the result of any of the calculations in clauses (i) through (iii) 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.

(b) **Tax Credits.** The Parties agree that except as set forth in the definition of the term “Storage Rate”, the following sentences of this subsection (c) shall apply. The Parties agree that the Storage Rate is not 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. Buyer shall reimburse Seller within thirty (30) days of Notice from Seller any reimbursement amounts owed by Buyer to Seller as set forth in the definition of Storage Rate.
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 Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 costs and penalties (including associated with Imbalance Energy costs) resulting from any deviations from Charging Notices or Discharging Notices or otherwise charging or discharging the Facility when not subject to a Charging Notice or Discharging Notice, or any failure by Seller to abide by the CAISO Tariff, the terms of this Agreement 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). Buyer or its designated SC shall make commercially reasonable efforts to cooperate with Seller to allow Seller to make Resource Adequacy substitutions with respect to such outages as permitted by the CAISO Tariff. The Parties agree that any Availability
Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

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

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

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

(g) Master Data File and Resource Data Template. The Parties will cooperate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master Data File. 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 at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC’s Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall
change such data without the other Party’s prior written consent. At least once per Contract Year, Seller shall cooperate with Buyer to review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) and CPUC’s Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information and any additional supporting documentation to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

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

(i) **SQMD Reporting.** If Seller elects to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan, Seller shall provide or cause to be provided to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, Settlement Quality Meter Data no later than six (6) Business Days after the relevant flow date. In connection with any SQMD Plan or designation of the Facility as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller in the SQMD Plan submission and approval process and perform the obligations required by the SQMD Plan or the CAISO applicable to Scheduling Coordinators with respect to submitting Settlement Quality Meter Data to the CAISO including without limitation submitting required affirmations and attestations (if any). Buyer (as Scheduling Coordinator) shall be responsible for submitting Settlement Quality Meter Data to the CAISO using the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer as a result of Seller’s failure to provide or have provided Settlement Quality Meter Data consistent with the SQMD Plan to Buyer (or Buyer’s designee including any Buyer Scheduling Coordinator), with respect to the Facility Meters within the timeframe required by this Section (i).
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are reasonably likely to affect Seller’s Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE 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 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 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.
|       | 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 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 29|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31|      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]
EXHIBIT G
FORM OF DAILY AVAILABILITY NOTICE

Trading Day: ______________________

Station: ______________________   Issued By: ______________________

Unit: ______________________   Issued At: ______________________

Unit 100% Available No Restrictions: ______________________

<table>
<thead>
<tr>
<th>Hour Ending</th>
<th>Available Effective Capacity</th>
<th>Available Storage Capability</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(MW)</td>
<td>(MWh)</td>
<td></td>
</tr>
<tr>
<td>1:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23:00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0:00</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comments: __________________________________________

____________________________________________________

____________________________________________________

____________________________________________________

____________________________________________________

Exhibit G - 1
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 Energy Storage Agreement dated _______ ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

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

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

3. The Facility’s Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.

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 of the Facility 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 (and, if applicable pursuant to the Agreement, Auxiliary 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.

8. The Facility and its meters have been designed and installed in a manner such that all Energy used for Station Use (and, if applicable pursuant to the Agreement, Auxiliary Use) within the Facility is metered, and there is no material Station Use within the Facility (other than Auxiliary Use) that is served by Energy from the Facility.

9. The temperature derate curve for the Facility inverters associated with the Installed Capacity is rated for a temperature derate beginning at[__]° C.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

Exhibit H - 1
this ______ day of _____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]  
By:______________________________  
Its:______________________________  
Date:____________________________

Exhibit H - 2
EXHIBIT I

FORM OF CAPACITY TEST CERTIFICATE

This certification (“Certification”) of Capacity Test results 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 Energy Storage 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 that a Capacity Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW to the Delivery Point at four (4) hours of continuous discharge, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, all 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 Energy Storage Agreement dated ____________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

(2) the Construction Start Date occurred on ____________ (the “Construction Start Date”); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____________________________________________________________________

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

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

[SELLER ENTITY]

By: ________________________________
Its: ________________________________

Date: ______________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]
Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

Beneficiary:

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

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 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 Energy Storage 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 officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite
documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing 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 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 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 officer of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (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 Energy Storage 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 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 Energy Storage 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 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**

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

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By: __________________________
Its: __________________________

Date: __________________________
## EXHIBIT N

### NOTICES

<table>
<thead>
<tr>
<th>Key Energy Storage, LLC  (“Seller”)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority  (“Buyer”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 700 Universe Blvd.</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Juno Beach, FL 33408</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Chief Executive Officer</td>
</tr>
<tr>
<td>Phone: (561) 691-2816</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>E-mail: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:dl-bmo-west-caiso@nexteraenergy.com">dl-bmo-west-caiso@nexteraenergy.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td><strong>Reference Numbers:</strong></td>
</tr>
<tr>
<td>Duns:</td>
<td>Duns:</td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: CPA Settlements</td>
</tr>
<tr>
<td>Phone: (561) 691-2816</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:dl-bmo-west-caiso@nexteraenergy.com">dl-bmo-west-caiso@nexteraenergy.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Scheduling:</strong> [TBD]</td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Day Ahead Scheduling</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (817) 303-1104</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:TenaskaComm@tnsk.com">TenaskaComm@tnsk.com</a></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td><strong>Confirmations:</strong> [TBD]</td>
<td><strong>Confirmations:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone:</td>
<td>Email:<a href="mailto:energycontracts@cleanpoweralliance.org">energycontracts@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Vice President, Power Supply</td>
</tr>
<tr>
<td>Phone: (561) 691-2816</td>
<td>Email: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Facsimile:</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:dl-bmo-west-caiso@nexteraenergy.com">dl-bmo-west-caiso@nexteraenergy.com</a></td>
<td></td>
</tr>
<tr>
<td>Key Energy Storage, LLC (“Seller”)</td>
<td>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td>BNK: [TBD]</td>
<td>BNK: River City Bank</td>
</tr>
<tr>
<td>ABA: [TBD]</td>
<td>ABA: 121133416</td>
</tr>
<tr>
<td>ACCT: [TBD]</td>
<td>ACCT: XXXXXX8042</td>
</tr>
</tbody>
</table>
EXHIBIT O
CAPACITY TESTS

Capacity Test Notice and Frequency

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

B. Subsequent Capacity Tests. Following the Commercial Operation 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 Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Capacity has varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any 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 Capacity. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) determined pursuant to such Capacity Test shall become the new Effective Capacity at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment 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 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 Seller’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.

**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 Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

   (1) Electrical output at the lesser of maximum discharging level (MW) and Guaranteed Capacity for four (4) continuous hours; and

   (2) Electrical input at maximum charging level at the 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 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 and recorded simultaneously for the Facility, at six (6) second intervals:

   (1) Time;

   (2) The amount of Facility Energy;

   (3) The amount of Charging Energy;

   (4) The amount of Station Use;

   (5) 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 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 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 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 to go from 0% SOC to 100% SOC;
7. Amount of Facility Energy to go from 100% SOC to 0% SOC.

E. **Test Conditions.**

1. **General.** At all times during a CT, the 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 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 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 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, followed by a completed Capacity Test Certificate unless a Capacity Test Certificate is waived by Buyer pursuant to Section 4.5(c). Such 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.

Seller’s CT report shall be deemed invalid if not delivered to Buyer within five (5) Business Days after the completion of any CT. Within five (5) Business Days after receipt of the later of such report or, as applicable, such Capacity Test Certificate, 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 conducting the first Commercial Operation Capacity Test, 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 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 Capacity. The Effective Capacity shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the four (4) hours of maximum sustained discharge pursuant to Section D(2) above (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Capacity, which shall be expressed in MW, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Capacity Test

• Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the SOC.

(3) Command a real power charge that results in an AC power of Facility’s maximum charging level, and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging.

(5) Record and store the Charging Energy, which shall be used to determine the Battery Charging Factor.

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the lesser of (i) the Facility’s maximum discharging level and (ii) the Guaranteed Capacity, 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 Facility has reached 0% SOC, or (c) the sustained discharging level is at least five percent (5%) less than the lesser of (i) the maximum discharging level and (ii) the Guaranteed Capacity for more than five (5) consecutive minutes.

(7) Record and store the SOC after four (4) hours of continuous discharging. If the Facility SOC remains above zero percent (0%) after discharging at a
rate at or above the Guaranteed Capacity (or at or above the Installed Capacity after a Commercial Operation 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 Facility Energy as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity and the Battery Discharging Factor.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC. Record and store the additional Facility Energy, if applicable.

- Test Results

(1) The resulting Effective Capacity measurement is the sum of the total Facility Energy at the Facility Meter divided by four (4) hours.

B. **AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility’s maximum discharging level within 25 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  
  (1) Record the Facility active power level at the Facility Meter.
  
  (2) Command the Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
  
  (3) Record and store the Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the Facility’s full charging level within 25 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  
  (1) Record the Facility active power level at the Facility Meter.
(2) Command the Facility to follow a simulated CAISO RIG signal of -Pmax at .95 power factor for ten (10) minutes.

(3) Record and store the 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.

D. **Reactive Power Production Test**

- **Purpose:** This test will demonstrate the reactive power production capability of the Facility.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- **Procedure:**
  
  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow __ 62 MVAR for ten (10) minutes.

  (3) Record and store the Facility reactive power response.

- System end state: The 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 facility.
- **System starting state:** The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- **Procedure:**

  (1) Record the Facility reactive power level at the Facility Meter.

  (2) Command the Facility to follow -__ 62 MVAR for ten (10) minutes.

  (3) Record and store the Facility reactive power response.

System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the period commencing upon CAISO Commercial Operation and continuing throughout the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Capacity Availability” for the current Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date) using the formula set forth below:

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

“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.

\[
\text{Unavailable Calculation Interval} = 1 \times C.I. \times \left( 1 - \text{the lesser of:} \frac{A}{\text{Effective Capacity}} \text{ or } \frac{B}{\text{Effective Capacity x 4 hrs}} \right)
\]

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date), where for each Calculation Interval:

“A” is the “Available Effective Capacity”, which shall equal the greater of the HOL and the absolute value of the LOL, considering the conditions of the Facility in total to receive Charging Energy from and deliver Facility Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Capacity.

“B” is the “Available Storage Capability”, which shall be calculated as 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 Facility is available to be charged (calculated as the available battery capability (in MWh) to receive Charging Energy from the Delivery Point 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 Facility is available to be discharged to the Delivery Point (calculated as the available battery discharging capability (in MWh) to delivery Facility Energy to the Delivery Point in the applicable Calculation Interval x the Battery
Discharging Factor). In calculating Available 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) that are able (considering the conditions of the Facility in total) to receive Charging Energy from and deliver Facility Energy to the Delivery Point, but Available Storage Capability shall never exceed the Effective Capacity x four (4) hours.

“Total YTD Calculation Intervals” means, for each applicable Contract Year (and for the period from CAISO Commercial Operation through the Commercial Operation Date), 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 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 Facility for such Calculation Interval, such that available Effective Capacity is calculated as set forth in the definition above, and available Storage Capability is calculated as the product of (A) the count of available system cells, multiplied by (B) the capability, in MWh, expected from each system cell under normal operating conditions pursuant to the manufacturer’s guidelines, and (ii) the amounts reported by Seller’s most recent Availability Notice (as updated pursuant to Section 4.10), which, with respect to the Available Effective Capacity, shall be calculated as the average of the “Gen Max” and “Load Max” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval, and with respect to the Available Storage Capability, shall be calculated as “Max Energy” minus “Min Energy” (or equivalent successor terms which may be used by the SC or CAISO from time to time) amounts reported in Seller’s Availability Notice and recorded in OMS for such Calculation Interval and for which calculation the Battery Charging Factor and Battery Discharging Factor shall not be applied, provided that any such revised Availability Notice indicating an increase in the Facility’s availability for the applicable Calculation Interval is submitted by Seller at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market. Except as otherwise expressly provided in this Agreement, the calculations of Available Effective Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of the Facility to charge or discharge Energy between the Facility and the Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). Any Calculation Interval in which the Facility fails to maintain connectivity to the CAISO (except to the extent caused by the CAISO) such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval; provided, if such failure to maintain connectivity only affects the availability of Ancillary Services and not Energy, then such Calculation Interval shall be deemed an Unavailable Calculation Interval on account of such failure only to the extent set forth in Section 4.3(d); provided further, any such Calculation Interval shall not be deemed an Unavailable Calculation Interval if the Facility responds with respect to such
Calculation Interval as directed by Buyer, Buyer’s Scheduling Coordinator or the CAISO via telephone, email, or some other means.

(c) If the total rated power of the Facility inverters is less than the Installed Capacity charging and discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval in a commercially reasonable manner consistent with Prudent Operating Practice.
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 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 Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include facility scheduling, operating restrictions and Communications Protocols.

| File Update Date: | [XX/XX/20XX] |
| Technology:       | Lithium Ion Batteries |
| Storage Unit Name:| Key Energy Storage |

### A. Contract Capacity

| Guaranteed Capacity (MW): | 190 |
| Effective Capacity (MW):  | 190 |

### B. Total Unit Dispatchable Range Information

| Interconnect Voltage (kV)          | 500 |
| Maximum Storage Level (MWh):       | 760 |
| Minimum Storage Level (MWh):       | 0   |
| Stored energy capability (MWh):    | 760 |
| Maximum Discharge (MW):            | 190 |
| Maximum Charge (MW):               | 190 |
| Guaranteed Efficiency Rate:        | As set forth on the Cover Sheet |
| Maximum energy throughput (Discharged MWh/year)*: | 277,400 (365 cycles) |

[*Any Reimbursable Station Use does not count towards maximum energy throughput.]

### C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/s) Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
<td>190</td>
<td></td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>190</td>
<td></td>
</tr>
</tbody>
</table>

### D. Ancillary Services

| Frequency regulation is included: | Yes |
| Spin is included:                 | Yes |

1. 

Exhibit Q - 1
EXHIBIT R

METERING DIAGRAM

[NTD: Seller to provide preliminary metering diagram, subject to SQMD plan update]

To be updated by Seller prior to Commercial Operation Date
EXHIBIT S

FORM OF GUARANTY

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

Recitals

A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“Seller”), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “ESA”) dated as of [____], 2023.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESA, as required by Section 8.8 of the ESA.

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 ESA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESA.

Agreement

1. Guaranty. For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESA, 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 ESA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following
its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty**. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the ESA. 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 ESA, 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 ESA 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 ESA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESA, or
   
   (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

   provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

4. **Waivers by Guarantor**. Guarantor hereby unconditionally waives as a condition precedent to
the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the ESA, 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 ESA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller or

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

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

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor’s ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor’s parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days
after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at [____]
   Attn: [____]

If delivered to Guarantor, to it at [____]
   Attn: [____]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the ESA is assigned in accordance with the terms thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. **WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

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

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

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

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

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

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS, INC.

By: ______________________________

Printed Name: ____________________

Title: ____________________________

BUYER:

[_______]

By: ______________________________

Printed Name: ____________________

Title: ____________________________

By: ______________________________

Printed Name: ____________________

Title: ____________________________
EXHIBIT T

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) [NextEra Entity], a Delaware limited liability company (the “Project Company”), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESA (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] (“ESA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the ESA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the ESA (collectively, the “ESA 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 otherthings, 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 ESA 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 ESA 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 ESA (subject to CPA’s rights and defenses under the ESA and the terms of this Consent) and accepts any such exercise; provided, insofar as the Collateral Agent exercises any such rights under the ESA or makes any claims with respect to payments or other obligations under the ESA, the terms and conditions of the ESA 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 and Collateral Agent’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the ESA, CPA is authorized to act in accordance with Collateral Agent’s instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent under such situation 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 ESA, or upon the occurrence or non-occurrence of any event or condition under the ESA 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 ESA (a “ESA Default”), CPA will not terminate or suspend its performance under the ESA until it first gives written notice of such ESA Default to Collateral Agent and affords Collateral Agent the right to cure such ESA Default within the applicable cure period under the ESA, which cure period shall run concurrently with that afforded Project Company under the ESA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the ESA of Collateral Agent’s intention to cure such ESA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESA Default) and is diligently proceeding to cure such ESA Default, notwithstanding the applicable cure period under the ESA, Collateral Agent shall have a period of sixty (60) days (or, if such ESA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the ESA other than to provide ESA Collateral, thirty (30) days, or, if such ESA Default is for failure by Project Company to provide ESA Collateral, ten (10)
Business Days) from the Collateral Agent’s receipt of the notice of such ESA Default from CPA to cure such ESA Default; provided, (a) if possession of the Facility is necessary to cure any such non-monetary ESA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the ESA 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 ESA Default, to complete such proceedings and cure such ESA Default, and (b) if Collateral Agent is prohibited from curing any such ESA 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 ESA 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 ESA 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 ESA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the ESA 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 ESA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the ESA (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 ESA 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 ESA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the ESA remaining to be performed having terms substantially the same as the terms of the ESA with respect to the remaining Contract Term (“Replacement ESA”); provided, before CPA is required to enter into a Replacement ESA, 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 ESA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESA, CPA may suspend performance of its obligations under such Replacement ESA, unless and until all ESA Defaults of Project Company under the ESA or Replacement ESA have been cured.

1.6  Transfer.

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

1.7  Assumption of Obligations.

(a)  Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESA or Replacement ESA, as applicable, including posting and collateral assignment of the ESA Collateral. Upon such assignment and the cure of any outstanding ESA Default, and payment of all other amounts due and payable to CPA in respect of the ESA or such Replacement ESA, the transferor shall be released from any further liability under the ESA or Replacement ESA, 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 ESA, including posting and collateral assignment of the ESA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESA.

(c)  No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESA 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 ESA, 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 ESA, Collateral Agent shall not have any personal liability to CPA under the ESA or Replacement ESA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the ESA, a Replacement ESA or the ESA 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 ESA relating to (a) a ESA Default by Project Company under the ESA, (b) any claim regarding a Force Majeure Event by CPA under the ESA, (c) any notice of dispute under the ESA, (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 ESA 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 ESA (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 ESA 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 ESA. 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 ESA is entered into or the ESA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the ESA, 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 ESA (b) terminate or suspend its performance under the ESA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESA

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 ESA 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 ESA 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 ESA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESA.

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 ESA, 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 ESA 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 ESA 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 ESA is in full force and effect, has been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitutes 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 ESA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESA; (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 ESA; and (d) the ESA 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 ESA, except as previously disclosed in writing and consented to by CPA.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

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

4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESA, 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 ESA 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.

Exhibit T - 7
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 under the ESA; (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 ESA; (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 ESA; and (d) the ESA 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 ESA.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

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

5.1 Authorization.

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

5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).
SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESA (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 ESA] of the ESA, (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 ESA. 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 and 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 ESA or any Replacement ESA, its obligations under such ESA or Replacement ESA 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.

[NEXTERA ENTITY],
a Delaware limited liability company.

By:____
[Name]
[Title]
Date:___

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

By:____
[Name]
[Title]
Date:___

[NAME OF COLLATERAL AGENT],
[Legal Status of Collateral Agent].

By:____
[Name]
[Title]
Date:___
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
EXHIBIT U
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 with respect to any Major Equipment are set forth in Sections 1 – 8 below (“Supply Chain Code”).

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 any work-related facility in addition to unreasonable restrictions on entering or exiting work-related 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 Major Equipment or BOP Services. 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 of Major Equipment 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 of Major Equipment shall ensure appropriate support and training is provided to all student workers. In the absence of local law, the wage rate for
student workers, interns, and apprentices shall be at least the same wage rate as other entry-
level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

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

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

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

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

7. Freedom of Association
In conformance with local law, Suppliers shall respect the right of all workers to form and
join trade unions of their own choosing, to bargain collectively, and to engage in peaceful
assembly as well as respect the right of workers to refrain from such activities. Workers
and/or their representatives shall be able to openly communicate and share ideas and
concerns with management regarding working conditions and management practices
without fear of discrimination, reprisal, intimidation, or harassment.
8. **Restricted Jurisdictions**
   No Major Equipment may include any components or materials mined, manufactured or produced in the Xinjiang Uyghur Autonomous Region of China.
EXHIBIT V
MATERIAL PERMITS

<table>
<thead>
<tr>
<th>No.</th>
<th>Permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Conditional Use Permit (including modifications)</td>
</tr>
</tbody>
</table>

Exhibit V - 1
EXHIBIT W

Force Majeure and/or Development Cure Period Claim Form

Instructions

A. Please review Article 10 and Exhibit B (if applicable) of the Power Purchase Agreement prior to filling out the form.

B. Fill out the form completely and return to your assigned Contract Manager at CPA.

Seller: [Name] Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller’s claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller’s claims are validated in full): [Date]

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the “Claimed Event”), including its cause, date of commencement and date it ended or is anticipated to end.

2. Please specify the extent of the delay or prevented performance caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.

3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller to prevent such event.

4. Please describe the commercially reasonable efforts taken to mitigate the delays or nonperformance caused by the Claimed Event and specify how such efforts reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.
5. Please attach supporting documentation, including without limitation:

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.

- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party’s mitigation efforts.

- Project schedule and/or GANTT charts that demonstrate the effect of the Claimed Event on the Guaranteed commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller, that I have reviewed this Claim, including any attached documentation, and that the facts and statements made in this Claim are true and correct to the best of my knowledge.

Signed: ________________

Name: ________________

Title: ________________

Date: ________________
Clean Power Alliance of Southern California (CPA) provides this remediation plan for resources procured pursuant to the Midterm Reliability (MTR) Order D.21-06-035. Despite project delays being wholly outside of CPA’s control, CPA has made every effort to remedy delays to online dates and ultimately amended contracts to ensure distressed projects come online.

Additionally, CPA has updated the CPUC monthly, with the status of project delays through the Procurement Status Report.

Since the December 1, 2023 filing, two projects, Chalan Solar + Storage and Dinuba Biomass, have reported a delay.

**Dinuba Biomass**

The Dinuba facility is a repowered biomass facility with an original Guaranteed Commercial Operation Date (GCOD) of January 10, 2024. The facility requires repairs and equipment upgrades to achieve commercial operations. Prior to contract execution, the counterparty indicated that it may need additional time to secure financing or identify an investment partner but did not anticipate that process to cause delays to the January 10, 2024 GCOD. The PPA allows for the extension of the GCOD for up to 180 days from January 10, 2024, to allow Community Renewable Energy Services (the Seller) additional time to secure financing. On October 9, 2023, the Seller informed CPA that all long lead time items had been ordered and it was finalizing financing for commencement of the facility repairs. On October 31, 2023, the Seller informed CPA that it expected financial close for the repairs to occur before December 31, 2023. In December 2023, Dinuba notified CPA that it was again facing delays related to financing. At this time, it is not clear whether the Seller will be able to secure financing and bring the project online.

CPA intended to utilize the Dinuba Biomass facility resource for its D.21-06-035 Tranche 6 Long-Lead Time procurement obligations. CPA will be conducting a Request for Offers in June 2024 and will seek bids for baseload resources to ensure that CPA meets its D.21-06-035 Long Lead Time resource requirement.

**Chalan Solar + Storage**

In September 2022, Chalan (the Seller) also notified CPA of delays to the Conditional Use Permit approval from Kern County. Chalan also communicated potential delays to the Initial Synchronization Date provided by PG&E. In October 2022, CPA and Chalan amended the PPA to resolve matters with respect to Chalan’s claimed delays. The amendment included a COD extension to 12/31/2024 and a material increase to the renewable rate ($/MWh) and storage rate ($/kW-mo.) reflecting the counterparty’s increased cost to deliver the project within the MTR compliance timeline. Absent these contract modifications, the contract would likely have
been terminated and the project would not have reached COD in time to contribute to MTR compliance. In addition, the contracted storage capacity was amended to account for an increase of up to 40 MW. The additional 40 MW was planned to come online by 6/1/2025, depending on how much additional deliverability Chalan was able to secure.

In January 2024, the Seller informed CPA that the battery expansion of 40 MW was no longer feasible given CAISO interconnection study timelines and the requirement to file a new Interconnection Agreement to expand the facility. Seller also communicated to CPA that the project schedule for the project would be affected because the Seller was experiencing delays with obtaining construction permits from Kern County required to start construction of the facility. This scenario is however contemplated under the PPA as the contract allows for development cure period extensions to the Guaranteed Commercial Operations Date (GCOD) for up to 180 days if material permits for the projects are delayed. In line with the PPA, in February 2024 the Seller sent notice to CPA for development cure period extensions to the GCOD from December 31, 2024, to June 1, 2025, and also communicated that it expects commercial operations to occur on April 1, 2025. On May 5, 2024, the Seller informed CPA that PG&E has begun construction on the interconnection facilities and network upgrades and that the project is on track to start construction in June 2024.

CPA will utilize the Chalan resource for its D.21-06-035 Tranche 4 procurement obligations. The Chalan facility is expected to come online in 2025, ahead of Tranche 4, to ensure CPA meets its procurement obligations.