CLEAN ENERGY ALLIANCE AGENDA

Board of Directors Special Meeting Agenda
September 22, 2022, 2:00 p.m.
City of San Marcos|Virtual Meeting

Pursuant to Government Code Section 54953(3) (Assembly Bill 361), and in the interest of public health and safety, Clean Energy Alliance (CEA) is temporarily taking actions to prevent and mitigate the effects of the COVID-19 pandemic by holding CEA Joint Powers Authority meetings electronically or by teleconferencing. All public meetings will comply with public noticing requirements in the Brown Act and will be made accessible electronically to all members of the public seeking to observe and address the CEA Joint Powers Authority Board of Directors.

Members of the public can watch the meeting live through the You Tube Live Stream Link at:
https://thecleanenergyalliance.org/agendas-minutes/
or
https://www.youtube.com/channel/UCGXJILzlTUJOCZwVGpYoC8Q
This is a view-only live stream. If the You Tube live stream experiences difficulties members of the public should access the meeting via the Zoom link below.

Members of the public can observe and participate in the meeting via Zoom by clicking:
https://us06web.zoom.us/j/81376410530
or telephonically by dialing:
(253) 215-8782
Meeting ID: 813 7641 0530

Members of the public can provide public comment in writing or orally as follows:

Written Comments: If you are unable to connect by Zoom or phone and you wish to make a comment, you may submit written comments prior to and during the meeting via email to: Secretary@thecleanenergyalliance.org. All written comments will be posted online and become part of the meeting record. To ensure announcement of receipt of your written comments during the meeting, please submit all written comments at least an hour prior to the commencement of the meeting. Public comments received in writing will not be read aloud at the meeting.

Oral Comments: You can participate in the meeting by providing oral comments either: (1) online by using the raise hand function and speaking when called upon or (2) using your telephone by pressing *9 to raise your hand and speaking when called upon.

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA"), please contact Secretary@thecleanenergyalliance.org prior to the meeting for assistance.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

BOARD COMMENTS & ANNOUNCEMENTS

PRESENTATIONS

PUBLIC COMMENT

APPROVAL OF MINUTES
August 25, 2022, Regular Meeting

Consent Calendar

Item 1: **Reconsideration of the Circumstances of the COVID-19 State of Emergency to Determine Whether the Legislative Bodies of Clean Energy Alliance will Continue to Hold Meetings Via Teleconferencing and Making Findings Pursuant to Government Code Section 54943(e)**

RECOMMENDATION
Continue meetings by teleconferencing pursuant to Government Code Section 54943(e), finding that: (1) the Board has reconsidered the circumstances of the state of emergency created by the COVID-19 pandemic; and (2) the state of emergency continues to directly impact the ability of the members to meet safely in person.

Item 2: **Clean Energy Alliance Treasurer's Report**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for July 2022 activity.

Item 3: **Consider Scheduling Clean Energy Alliance Special Board Meeting for October 20, 2022, and Canceling Regular Meeting of October 27, 2022**

RECOMMENDATION
Schedule Clean Energy Alliance Special Board Meeting for October 20, 2022 and cancel the regular meeting of October 27, 2022.

Item 4: **Consider Adoption of Resolution No. 2022-007 Approving Amendment to Conflict of Interest Code**

RECOMMENDATION
Adopt Resolution No. 2022-007 Approving Amendments to Conflict of Interest Code.

New Business

Item 5: **Clean Energy Alliance Chief Executive Officer Operational, Administrative and Regulatory Affairs Update**

RECOMMENDATION
Receive and file Community Choice Aggregation Update Report from Chief Executive Officer and Regulatory Affairs Report from Special Counsel Tosdal APC.

Item 6: **Consider Approval of 15-Year Power Purchase Agreement with Cape Generating Station 1 LLC**

RECOMMENDATION
Approve 15-Year Power Purchase Agreement with Cape Generating Station 1 LLC for geothermal renewable energy for an amount not to exceed $38,200,000. Authorize the Chief Executive Officer to execute all documents, subject to Transactions Attorney approval.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS

NEXT MEETING: Regular Board Meeting October 27, 2022, 2pm (Subject to Change by Board), City of San Marcos, Virtual

Clean Energy Alliance - Board of Directors
Regular Meeting Minutes
August 25, 2022, 2:00 p.m.
City of San Marcos|Virtual Meeting
Teleconference Locations Per Government Code Section 54953(3) (Assembly Bill 361)

CALL TO ORDER: Chair Becker called to order the regular meeting of the Clean Energy Alliance at 2:01 p.m.

ROLL CALL: Board Members: Musgrove, Acosta, Inscoe, Vice Chair Druker, Chair Becker

FLAG SALUTE: Board Member Musgrove led the flag salute.

ITEM 4: Motion by Board Member Musgrove, second by Board Member Acosta, to move Item 4 to be considered at this time.
Motion carried unanimously, 5/0.

Item 4: Consider Adoption of Resolution No. 2022-005 Approving Amended and Restated Amendment No. 1 to Clean Energy Alliance Joint Powers Agreement

RECOMMENDATION
Adopt Resolution No. 2022-005 Approving Amended and Restated Amendment No. 1 to Clean Energy Alliance Joint Powers Agreement.

Motion by Board Member Musgrove, second by Board Member Inscoe, to adopt Resolution No. 2022-005 approving Amended and Restated Amendment No. 1 to the Clean Energy Alliance Joint Powers Agreement adding the cities of Oceanside and Vista as members to the Clean Energy Alliance and becoming parties to the CEA JPA.
Motion carried unanimously, 5/0.

OATH OF OFFICE – CITY OF OCEANSIDE & CITY OF VISTA PRIMARY AND ALTERNATE BOARD MEMBERS
ACTION: Interim Board Secretary Susan Caputo administered the Oath of Office to incoming Board Member Joe Green and Alternate Board Member Katie Melendez of the City of Vista and Board Member Ryan Keim of the City of Oceanside. Incoming Alternate Board Member Kori Jensen will take the oath at a later date.

BOARD COMMENTS & ANNOUNCEMENTS: Board Members Acosta and Inscoe extended greetings and welcomed the new Board Members to the CEA.

PRESENTATIONS
Clean Energy Alliance One-Year Anniversary Video Presentation - CEO Barbara Boswell shared the video presentation highlighting the accomplishments of CEA in its first year of operation.

Report from Clean Energy Alliance Community Advisory Committee (CAC) Chair Dwight Worden – CAC Meeting August 4, 2022 – CAC Chair Worden reported that the CAC discussed outreach and social media and how to quickly combat misinformation which was identified as a major issue; how CAC can help identify community groups in their city and that CAC would like to have a presence at community events; possibly penning articles for local publications on CEA activities; meeting with and informing school districts on CEA activity; reaching out to SDG&E direct access customers to ensure awareness of what CEA has to offer; and providing informational handouts for each of the member cities.

PUBLIC COMMENT: None

APPROVAL OF MINUTES
July 28, 2022, Regular Meeting

Motion by Chair Becker, second by Vice Chair Druker, to approve the minutes of the regular meeting held July 28, 2022.
Motion carried unanimously, 5/0 with Board Members Keim and Green abstaining.

Consent Calendar

Item 1: **Reconsideration of the Circumstances of the COVID-19 State of Emergency to Determine Whether the Legislative Bodies of Clean Energy Alliance will Continue to Hold Meetings Via Teleconferencing and Making Findings Pursuant to Government Code Section 54943(e)**

RECOMMENDATION
Continue meetings by teleconferencing pursuant to Government Code Section 54943(e), finding that: (1) the Board has reconsidered the circumstances of the state of emergency created by the COVID-19 pandemic; and (2) the state of emergency continues to directly impact the ability of the members to meet safely in person.

Item 2: **Clean Energy Alliance Treasurer's Report**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for June 2022 activity.

Item 3: **Consider Scheduling Clean Energy Alliance Special Board Meeting for September 22, 2022, and Canceling the Regular Meeting of September 29, 2022**

RECOMMENDATION
Schedule Clean Energy Alliance Special Board Meeting for September 22, 2022, and cancel the regular meeting of September 29, 2022.

Item 4: **Consider Adoption of Resolution No. 2022-005 Approving Amended and Restated Amendment No. 1 to Clean Energy Alliance Joint Powers Agreement**

RECOMMENDATION
Adopt Resolution No. 2022-005 Approving Amended and Restated Amendment No. 1 to Clean Energy Alliance Joint Powers Agreement. (This item was considered at the front of the agenda.)

Item 5: **Ratify San Diego Gas & Electric Confirmation for the Long-Term Voluntary Allocation of Renewable Energy Credits**

RECOMMENDATION
Ratify San Diego Gas & Electric Confirmation for the Long-Term Allocation of Renewable Energy Credits.

Item 6: **Consider Adoption of Resolution No. 2022-006 Attesting to the Veracity of the 2021 Power Source Disclosure Reports and 2021 Power Content Label Addressing the Clean Impact, Clean Impact Plus and Green Impact Retail Service Offerings**

RECOMMENDATION
Adopt Resolution No. 2022-006 attesting to the veracity of the 2021 Power Source Disclosure Reports and 2021 Power Content Label addressing the Clean Impact, Clean Impact Plus and Green Impact Retail Service Offerings.

Item 7: **Consider Approval of Clean Energy Alliance Policy #CEA-019 Check Handling Policy**

RECOMMENDATION
Approve Clean Energy Alliance Policy #CEA-019 Check Handling Policy.

Motion by Board Member Green, second by Board Member Inscoe, to approve Items 1-3, and 5-7 of the consent calendar.
Motion carried unanimously, 7/0.

New Business

Item 8: **Consider Appointment of Clean Energy Alliance Interim Chief Financial Officer/Treasurer**

RECOMMENDATION
Appoint Andy Stern as Interim Chief Financial Officer/Treasurer.

CEO Barbara Boswell presented the item commenting that CEA has had the pleasure of having Marie Berkuti serve as the Interim Chief Financial Officer and Treasurer since her retirement from the City of Solana Beach. Marie has been essential in the launch of CEA and setting up an accounting system and developing internal processes and procedures. Ms. Berkuti will fully retire as of August 31 and CEA staff has found and determined that Peninsula Clean Energy Chief Financial Officer retiree Andy Stern possesses the experience and expertise to benefit CEA in its growth as the new Interim Chief Financial Officer/Treasurer.

Ms. Berkuti expressed her appreciation for the opportunity to work with the Board and CEO Boswell in launching CEA and welcomed Mr. Stern.

Motion by Board Member Green, second by Board Member Keim, to approve recommendation and appoint Andy Stern as Interim Chief Financial Officer/Treasurer.
Motion carried unanimously, 7/0.

Item 9: **Clean Energy Alliance Chief Executive Officer Operational, Administrative and Regulatory Affairs Update**

RECOMMENDATION
Receive and file Community Choice Aggregation Update Report from Chief Executive Officer and Regulatory Affairs Report from Special Counsel Tosdal APC.

CEO Boswell provided an update commenting on the first annual Net Energy Metering (NEM) True Ups for CEA solar customers who had their anniversaries in May and June. Per CEA policy If generation exceeds usage a Net Surplus Compensation (NSC) is earned; a check is issued if NSC exceeds $100; less than $100 is rolled forward. Ms. Boswell noted that over 1500 checks were issued. For the coming year, CEA has worked with San Diego Gas & Electric to change its billing process. In each month if a customer incurs a charge due, the charges will be presented on the bill and the customer has the option of paying when due or allowing charges to roll to the end of the relevant period.

Erin Hudak of Tosdal APC, provided the legislative and regulatory update highlighting the Inflation Reduction Act of 2022 commenting that this recently passed bill will address energy and climate change goals by lowering consumer energy cost and increasing energy security as well as investing in decarbonizing all sectors of the economy with tax credits for clean energy sources and technology; regarding the SDG&E General Rate Case (GRC) commenting that the prehearing conference focused on scoping issues, mainly the question of cost functionalization methodologies and should they be reviewed in Phase 1 as proposed by joint CCAs noting that cost allocation among customer classes is out of scope referring to the process by which costs are allocated across various utility functions. The final scoping memo is anticipated to be released September/October; regarding New CPUC Demand Flexibility Rulemaking commenting that a significant overhaul to demand response rules with updates to rate design principles, guidance principles for demand flexibility streamline of niche rates and programs to expand the use of demand flexibility beyond early adopters is anticipated; and lastly the status update on NEM 3.0 included the comments schedule and anticipated CPUC proposed decision.

Board comments/inquiries included inquiry and confirmation of forthcoming CEA staff to procure grant funds and comment on delay NEM 3.0 decision, continuing to follow and consideration of sending a letter to CPUC to express support of renewable energy.

CEA Board received and filed report.

Item 10: Appoint Del Mar and Solana Beach Community Advisory Committee Members

RECOMMENDATION

Appoint City of Del Mar Community Advisory Committee Member for term through December 31, 2022, and City of Solana Beach Community Advisory Committee Member for term through December 31, 2023.

CEO Barbara Boswell made introductory comments and noted that the Del Mar appointment will be through the end of the current calendar year and the Solana Beach appointment will be through December 31, 2023.

Motion by Vice Chair Druker, second by Board Member Inscoe, to appoint Dolores Davies Jamison to represent the City of Del Mar on the Community Advisory Committee for a term through December 31, 2022, and to appoint Greg Coleson to represent the City of Solana Beach on the Community Advisory Committee for a term through December 31, 2023, as recommended by respective Board Members. Motion carried unanimously, 7/0.

Item 11: Declare Community Advisory Committee Vacancies for the Cities of Oceanside and Vista

RECOMMENDATION

Declare Community Advisory Committee vacancies for the cities of Oceanside and Vista for terms ending in 2024 and 2025 and direct the application period to be open through September 30, 2022, for appointments October 27, 2022.

CEO Boswell presented the item commenting that per the CEA CAC Policy two CAC members are selected from each member agency to serve staggered three-year terms. Applicants are required to be residents or business owners withing the city appointing membership, are subject to conflict of interest laws, and must have relevant background in electricity, community outreach or engagement or public advocacy, and must be committed to serving on the CAC and attending CAC meetings.

Motion by Board Member Keim, second by Chair Becker, to declare vacancies on the Community Advisory Committee for the cities of Oceanside and Vista for terms ending in December 2024 and December 2025 and direct the application period to be open through September 30, 2022.
Motion carried unanimously, 7/0.

Item 12: Consider and Provide Direction Regarding Amendment to Clean Energy Alliance Joint Powers Agreement Setting Chair and Vice Chair Term Limits

RECOMMENDATION

Consider and provide direction regarding amendment to Clean Energy Alliance Joint Powers Agreement setting Chair and Vice Chair term limits.

CEO Barbara Boswell gave an overview of the item and requested direction of the Board.

Following discussion Board consensus to consider Chair and Vice Chair terms via administrative policy rather than JPA amendment. The proposed administrative policy will be brought to the board for consideration at the October Board meeting.

Motion by Board Member Green, second by Vice Chair Druker, to return an administrative policy for Board consideration reflecting that the number of consecutive terms for the Chair and the Vice Chair be two years.
Motion carried unanimously, 7/0.

Board Member Acosta indicated that with the approval of the Special Board Meeting on September 22 and cancellation of the Regular Board Meeting on September 29, she is not able to attend, and Alternate Board Member Priya Baht-Patel will be attending.

ADJOURN: Chair Becker adjourned the meeting at 3:11 p.m.

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Susan Caputo, MMC
Interim Board Secretary

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 1: Reconsideration of the circumstances of the COVID-19 state of emergency to determine whether the legislative bodies of Clean Energy Alliance will continue to hold meetings via teleconferencing and making findings pursuant to Government Code Section 54953(e)

RECOMMENDATION

Continue meetings by teleconferencing pursuant to Government Code Section 54953(e), find that: (1) the Board has reconsidered the circumstances of the state of emergency created by the COVID-19 pandemic; and (2) the state of emergency continues to directly impact the ability of the members to meet safely in person.

BACKGROUND AND DISCUSSION

On September 16, 2021, Governor Newsom signed AB 361 amending the Brown Act to allow local agencies to meet remotely during declared emergencies under certain conditions. AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act's standard teleconferencing provisions, including the requirement that meetings be conducted in physical locations, under specified conditions. Namely, the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The Board of Directors and CEA's other legislative bodies have met using teleconferencing throughout the COVID-19 pandemic to protect the health and safety of the public and staff. On October 28, 2021, the Board of Directors determined that the factual circumstances exist for CEA to continue to hold meetings pursuant to AB 361. Specifically, on March 4, 2020, Governor Newsom declared a State of Emergency in response to the COVID-19 pandemic (the "Emergency"). The Emergency continues to exist. In addition, the Centers for Disease Control and Prevention continue to advise that COVID-19 spreads more easily indoors than outdoors and that people are more likely to be exposed to COVID-19 when they are closer than six feet apart from others for longer periods of time. Based on this advice and as a result of the emergency, the Board determined that meeting in person presents imminent risks to the health or safety of attendees.

To continue meeting remotely pursuant to AB 361, an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body's members to meet safely in person, or state or local officials continue to impose or recommend measures to promote social distancing. These findings should be made not later than 30 days after teleconferencing for the first time pursuant to AB 361, and every 30 days thereafter.

Due to the ongoing emergency, the need to promote social distancing to reduce the likelihood of exposure to COVID-19, and the imminent risks to the health or safety of meeting attendees, staff recommends that the legislative bodies of CEA hold public meetings via teleconferencing pursuant to Government Code Section 54953(e) and make the requisite findings to continue to do so.

FISCAL IMPACT

There is no fiscal impact by this action.

ATTACHMENTS

None.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Andy Stern, Interim Chief Financial Officer/Treasurer

ITEM 2: Clean Energy Alliance Treasurer's Report

RECOMMENDATION

Receive and File Clean Energy Alliance (CEA) Interim Treasurer's Report for July 2022.

BACKGROUND AND DISCUSSION

This report provides the Board with the following financial information through July 31, 2022:

- Statement of Financial Position (Unaudited and preliminary) – Reports assets, liabilities, and financial position of the CEA as of July 31, 2022.
- Statement of Revenues, Expenses and Changes in Net Position (Unaudited and preliminary) for the twelve months ended July 31, 2022.
- Budget to Actuals Comparison Schedule (Unaudited and preliminary) – Reports actual revenues and expenditures compared to the annual amended budget as of July 31, 2022.
- List of Payments Issued – Reports payments issued for July 2022.

As of July 31, 2022, liabilities represent invoices and estimated accruals for energy and services received but not yet paid. The noncurrent liabilities relate to debt with JPMorgan as well as amounts due to the member cities of Carlsbad, Del Mar and Solana Beach. CEA is currently making interest only payments on the debt from JPMorgan. The amounts due to the member agency were for start-up costs and services provided to CEA for the period December 2019 to June 2020. These invoices are scheduled to be paid three years from the time CEA is operational.

CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
As of July 31, 2022

ASSETS	
Current assets	
Cash and cash equivalents	$ 5,481,824
Accounts receivable, net	9,227,601
Accrued revenue	4,525,154
Other receivables	20,708
Prepaid expenses	232,752
Deposits	500,000
Total current assets	19,988,039
Noncurrent assets	
Restricted cash	227,000
Deposits	1,115,000
Total noncurrent assets	1,342,000
Total assets	21,330,039
LIABILITIES	
Current liabilities	
Accrued cost of energy	7,476,569
Accounts payable	270,531
Deferred revenue	208,400
Other accrued liabilities	81,572
Total current liabilities	8,037,072
Noncurrent liabilities	
Due to member agencies	504,017
Bank note payable	13,820,000
Total noncurrent liabilities	14,324,017
Total liabilities	22,361,089
NET POSITION	
Unrestricted (deficit)	(1,031,050)
Total net position	$ (1,031,050)

These financial statements have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
One Month ended July 31, 2022

OPERATING REVENUES		
Electricity sales, net	$	8,450,392
Total operating revenues		8,450,392
OPERATING EXPENSES		
Cost of electricity		5,005,709
Contract services		208,149
General and administration		10,453
Total operating expenses		5,224,311
Operating income (loss)		3,226,081
NONOPERATING REVENUES (EXPENSES)		
Interest income		516
Interest expense		(60,510)
Nonoperating revenues (expenses), net		(59,994)
CHANGE IN NET POSITION		3,166,087
Net position at beginning of period		(4,197,137)
Net position at end of period	$	(1,031,050)

These financial statements have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

BUDGET TO ACTUALS COMPARISON SCHEDULE

At its June 30, 2022, board meeting, the CEA Board approved the Fiscal Year (FY) 2022/23 budget approving $76,745,240 in total operating and nonoperating expenses. For the year-to-date, $5,284,821 has been expended. Revenues for the year-to-date reached $8,450,392. The overall increase in net position (ignoring loan proceeds) for the year-to-date was $3,166,087.

The Budget to Actuals Comparison Schedules as of July 31, 2022, is shown on the next page.

CLEAN ENERGY ALLIANCE
BUDGET TO ACTUALS COMPARISON SCHEDULE
One Month ended July 31, 2022

	ANNUAL BUDGET	ACTUAL YEAR-TO-DATE	BUDGET VARIANCE
Operating Revenues			
Energy Sales	$ 80,786,405	$ 8,450,392	$ 72,336,013
Total Operating Revenue	**80,786,405**	**8,450,392**	**72,336,013**
Operating Expenses			
Power Supply	73,000,000	5,005,709	67,994,291
Data Manager / Call Center	1,151,180	71,002	1,080,178
Staffing/Consultants	529,360	22,261	507,099
Legal Services	335,000	24,674	310,326
Professional Services	981,600	89,410	892,190
Audit Services	10,000	-	10,000
Software & Licenses	15,100	401	14,699
Membership Dues	121,000	9,928	111,072
Printing	55,000	529	54,471
Postage	50,000	337	49,663
Advertising	15,000	60	14,940
Insurance	30,000	-	30,000
Bank Fees	2,000	-	2,000
Total Operating Expenses	**76,295,240**	**5,224,311**	**71,070,929**
Operating Income (Loss)	**4,491,165**	**3,226,081**	**1,265,084**
Non-Operating Revenues (Expenses)			
Interest Income	5,000	516	4,484
Interest Expense	(450,000)	(60,510)	(389,490)
Total Non-Operating Expenses	**(445,000)**	**(59,994)**	**(385,006)**
Net Increase (Decrease) in Available Fund Balance	**$ 4,046,165**	**$ 3,166,087**	**$ 880,078**

These financial statements have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

LIST OF PAYMENTS ISSUED

The report on the following page provides the detail of payments issued by CEA for July 2022. All payments were within approved budget.

Date	Type	Vendor	Description	Amount
07/05/2022	Wire	THE ENERGY AUTHORITY	CAISO Weekly Settlement	209,818.44
07/11/2022	Wire	THE ENERGY AUTHORITY	CAISO Weekly Settlement	144,339.39
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	49.78
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	96.28
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	9.51
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	43.48
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	1.24
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	120.57
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	120.57
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	197.34
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	289.26
07/14/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	367.61
07/18/2022	Wire	THE ENERGY AUTHORITY	CAISO Weekly Settlement	181,042.93
07/20/2022	Wire	Direct Energy	JUNE-2022 - Capacity	171,500.00
07/20/2022	Wire	EDF TRADING NORTH AMERICA	JUNE 2022 - Capacity	208,500.00
07/20/2022	Wire	SDG&E (Procurement)	JUNE 2022 - Capacity	75,990.00
07/20/2022	Wire	SEMPRA	June 2022 - Capacity	274,400.00
07/22/2022	ACH/CHECK	NEM CUSTOMER	NEM Cash out 2022	76.14
07/25/2022	Wire	Powerex	August 2022 - Energy Prepayment	107,157.74
07/25/2022	Wire	THE ENERGY AUTHORITY	CAISO Weekly Settlement	23,863.02
07/26/2022	ACH/CHECK	Neyenesch Printers	June 2022 - New Move Letter + Opt Out Notice	772.97
07/27/2022	ACH/CHECK	Neyenesch Printers	June 2022 - New Move Letter + Notice #4 Postcard	609.21
07/28/2022	ACH/CHECK	Braun Blaising Smith Wynne	May 2022 - General Matters and Joint CCA Costs	871.31
07/28/2022	ACH/CHECK	Hall Energy Law PC	June 2022 - Counsel Services - Transaction Support	635.00
07/28/2022	ACH/CHECK	OneStream Networks, LLC	June 2022 Telephone	419.33
07/28/2022	ACH/CHECK	Pacific Energy Advisors, Inc	June 2022 - Technical Consulting	23,600.00
07/28/2022	ACH/CHECK	CalCCA	Operational Member Dues - Q1 FY 22-23	29,784.75
07/28/2022	ACH/CHECK	Calpine Energy Solutions (Data MGR)	June 2022 Services - 70,923 Meters @ $1.00	70,923.00
07/28/2022	ACH/CHECK	Maher Accountancy	Accounting	7,500.00
07/28/2022	ACH/CHECK	Richards, Watson & Gershon	May 2022 - General Counsel Services	1,440.50
07/28/2022	ACH/CHECK	The Bayshore Consulting Group, Inc	June 2022 - CEO and Clerk Services	18,159.13
07/28/2022	ACH/CHECK	THE ENERGY AUTHORITY	June 2022 - Scheduling Fees	11,700.00
07/28/2022	ACH/CHECK	Tosdal APC	June 2022 - Regulatory Services	7,361.00
07/28/2022	ACH/CHECK	Tripepi, Smith & Associates, Inc.	July 2022 - Communications and Marketing Service	12,012.33
07/28/2022	ACH/CHECK	WREGIS	Retired & Annual Fee	760.00
07/28/2022	ACH/CHECK	Keyes & Fox LLP	June 2022 - Professional Services	7,191.50
07/29/2022	ACH/CHECK	California Dept Tax & Fee Admin	2022-Q2 Electric Energy Surcharge	44,124.00
07/29/2022	Wire	THE ENERGY AUTHORITY	CAISO Weekly Settlement	81,645.62
07/29/2022	Wire	JPMorgan	JP Morgan - July 2022 Interest	60,509.72
07/29/2022	ACH/CHECK	Braun Blaising Smith Wynne	June 2022 General Matters and Joint CCA Costs	1,040.86
			Total for Operating Account	**1,779,043.53**

FISCAL IMPACT

There is no fiscal impact associated with this report.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 3: Consider Scheduling Special Clean Energy Alliance Board Meeting on October 20, 2022, and Canceling the October 27, 2022, Regular Board Meeting

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RECOMMENDATION

Schedule a Special Clean Energy Alliance Board meeting on October 20, 2022, and cancel the October 27, 2022, Regular Board Meeting.

BACKGROUND AND DISCUSSION

Pursuant to Government Code Section 54943(e) (Code), Clean Energy Alliance (CEA) has been holding its Board and Community Advisory meetings remotely via video and telephonic means, which requires the Board to make findings pursuant to the Code every 30 days. There are more then 30 days between the September 22, 2022, Special Board meeting and the October 27, 2022, Regular Board meeting, necessitating the scheduling of a Special Board Meeting prior to October 27, 2022.

Staff recommends scheduling a Special meeting on October 20, 2022, and canceling the October 27, 2022, regular Board meeting. The November Regular Board meeting is scheduled for Thursday November 17, which is within the 30-day period required for making the finding.

FISCAL IMPACT

There is no fiscal impact of this action.

ATTACHMENTS

None

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Johanna Canlas, General Counsel

ITEM 4: Consider Adoption of Resolution No. 2022-007 Amending Conflict of Interest Code

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RECOMMENDATION

Adopt Resolution No. 2022-007 Amending Conflict of Interest Code.

BACKGROUND AND DISCUSSION

California Government Code Section 87300 requires Clean Energy Alliance ("CEA") to adopt and promulgate a Conflict of Interest Code ("Code") that applies to those officials and designated positions who are involved in CEA's decision making. At its regular meeting November 19, 2019, the CEA Board adopted Resolution No. 2019-001 adopting its Code and approved amendments to the Code through adoption of Resolution No. 2020-006 at its November 19, 2020, Board Meeting. CEA is required to review its Code at least every two years to determine if any amendments are necessary. The Code applies to the designated economic interests that exist within the jurisdiction CEA and not just the jurisdiction of the Member Agencies. The proposed amendment adds the Assistant General Counsel position.

Government Code Section 82011(b) requires the San Diego County Board of Supervisors to be the code reviewing body for CEA's Code. If the Board adopts the Code amendment, staff will forward the resolution and the CEA's Conflict of Interest Code to San Diego County for review and approval. The Board of Supervisors is required to act upon the Conflict of Interest Code within ninety (90) days after receiving the Code for review. The Board of Supervisors may approve the Code as submitted, make revisions, or return the proposed Code to the CEA's Board for review and resubmission back to the Board of Supervisors for approval.

FISCAL IMPACT

There is no fiscal impact of this action.

ATTACHMENTS

Resolution No. 2022-007 Amending Conflict of Interest Code

CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-007

A RESOLUTION OF THE CLEAN ENERGY ALLIANCE BOARD OF DIRECTORS
AMENDING THE CONFLICT OF INTEREST CODE TO ADD
ASSISTANT GENERAL COUNSEL POSITION

WHEREAS, Government Code Section 87300 requires state and local government agencies to adopt conflict of interest codes; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730), which contains the terms of a standard conflict of interest code, which may be incorporated by reference in an agency's code; and

WHEREAS, the Clean Energy Alliance ("CEA") is a joint powers authority subject to Government Code Section 87300 code-filing requirement; and

WHEREAS, on November 5, 2019, the Board of Directors of the CEA ("Board") adopted a Conflict of Interest of Code by Resolution No. 2019-001 in accordance with the requirements of state law, and this Conflict of Interest Code was subsequently approved by the San Diego County Board of Supervisors as its code reviewing body; and

WHEREAS, on November 19, 2020, the Board adopted Resolution No. 2020-006, rescinding Resolution No. 2019-001 and amending the Conflict of Interest Code; and

WHEREAS, the Board desires to amend the Conflict of Interest Code in order to add the Assistant General Counsel position.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Clean Energy Alliance, as follows:

Section 1. The Board hereby rescinds Resolution No. 2020-006 and adopts an amended Conflict of Interest Code, a copy of which is attached hereto as Exhibit A and shall be on file with the Secretary of CEA, and available to the public for inspection on CEA's website.

Section 2. The amended Conflict of Interest Code shall be submitted to the Board of Supervisors of San Diego County for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed amended Conflict of Interest Code as submitted.

Section 3. Any violation of any provision of the Conflict of Interest Code is subject to the administrative, criminal, and civil sanctions provided in the Political Reform Act, Government Code Section 81000 *et seq*.

The foregoing Resolution was passed and adopted this 22nd day of September 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____
Kristie Becker, Chair

ATTEST:

_____
Susan Caputo, Interim Board Secretary

EXHIBIT A

CONFLICT OF INTEREST CODE OF THE CLEAN ENERGY ALLIANCE

Incorporation of FPPC Regulation 18730
(2 California Code of Regulations, Section 18730) by Reference

The Political Reform Act (Government Code § 81000, *et seq*.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs § 18730) that contains the terms of a standard conflict of code which can be incorporated by reference in an agency's code. After public notice and hearing, Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. This incorporation page, Regulation 18730 and the attached Appendix designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Clean Energy Alliance ("CEA").

All Officials and Designated Positions required to submit a statement of economic interests shall file their statements with the Secretary, as CEA's Filing Officer. CEA's Filing Officer shall retain the originals of the statements of all Officials and Designated Positions and shall make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX
CONFLICT OF INTEREST CODE of the
Clean Energy Alliance
Amended on September 22, 2022

PART A

DESIGNATED POSITIONS
GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS	DISCLOSURE CATEGORY
Board of Directors	1, 2, 3
Board of Directors (Alternates)	1, 2, 3
Chief Executive Officer	1, 2, 3,
Treasurer	1, 2, 3
General Counsel	1, 2, 3
Assistant General Counsel	1, 2, 3
Members of Community Advisory Committee	1, 2, 3
Consultants and New Positions[1]	4

[1] Individuals providing services as a Consultant defined in Regulation 187300.3(a)(2), or in a new position created since this Code was last approved that makes or participates in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitations:

The Chief Executive Officer or his or her designee may determine in writing that a particular consultant or new position, although a "designated position", is hired to perform a range of duties that is limited in scope and thus not required to fully comply with disclosure requirements in this section. Such written determination shall include a description of the consultant's or new position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. (Gov. Code Section 81008.)

CLEAN ENERGY ALLIANCE
CONFLICT OF INTEREST CODE

PART B

DISCLOSURE CATEGORIES

Officials and designated positions must report financial interests in accordance with the assigned disclosure categories.

CATEGORY 1:

Persons in this category shall disclose all interests in real property within the jurisdiction of CEA. Real property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by CEA.

Persons are not required to disclose a residence, such as a home or vacation cabin, used exclusively as a personal residence; however, a residence in which a person rents out a room or for which a person claims a business deduction may be reportable.

CATEGORY 2:

Persons in this category shall disclose all income (including gifts, loans and travel payments) from sources that contract with CEA, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, commodities, technology, equipment, vehicles, machinery, or services, including training or consulting services of the type utilized by CEA.

CATEGORY 3:

Persons in this category shall disclose all business positions and investments in business entities that contract with CEA or that provide, plan to provide, or have provided during the previous two years, facilities, goods, commodities, technology, equipment, vehicles, machinery, or services, including training or consulting services of the type utilized by CEA.

CATEGORY 4:

Individuals who perform under contract the duties of any designated position shall be required

to file Statements of Economic Interests disclosing reportable interests in the categories assigned to that designated position.

In addition, individuals who, under contract, participate in decisions which affect financial interests by providing information, advice, recommendation, or counsel to CEA which could affect their financial interests shall be required to file Statements of Economic Interests, unless they fall within the Political Reform Act's exceptions to the definition of consultant. The level of disclosure shall be determined by the Chief Executive Officer or his or her designee. (See footnote in Part A for clarification.)

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 5: Clean Energy Alliance Operational, Administrative and Regulatory Affairs Update

---

RECOMMENDATION

1) Receive and File Operational and Administrative Update Report from Chief Executive Officer.
2) Receive Community Choice Aggregation Regulatory Affairs Report from Special Counsel.

BACKGROUND AND DISCUSSION

This report provides an update to the Clean Energy Alliance (CEA) Board regarding the status of operational, administrative, and regulatory affairs activities.

OPERATIONAL UPDATE

Expansion of Clean Energy Alliance

Clean Energy Alliance (CEA) is planning two service expansions over the next two years:

April 2023 – Escondido and San Marcos Service Enrollments
April 2024 – Oceanside and Vista Service Enrollments

The chart below reflects activities related to the expansions over the six months:

ACTIVITY	TIMING	STATUS
Draft Implementation Plan Amendment – Oceanside & Vista to CEA Board	October 2022	In Progress
Marketing & Outreach – Escondido & San Marcos	November 2022 – April 2023	
CEA: File Implementation Plan Amendment	By December 31, 2022	
Default Power Supply Selection – Escondido & San Marcos	November 2022	
Noticing – Escondido & San Marcos	February/March/May June 2023	

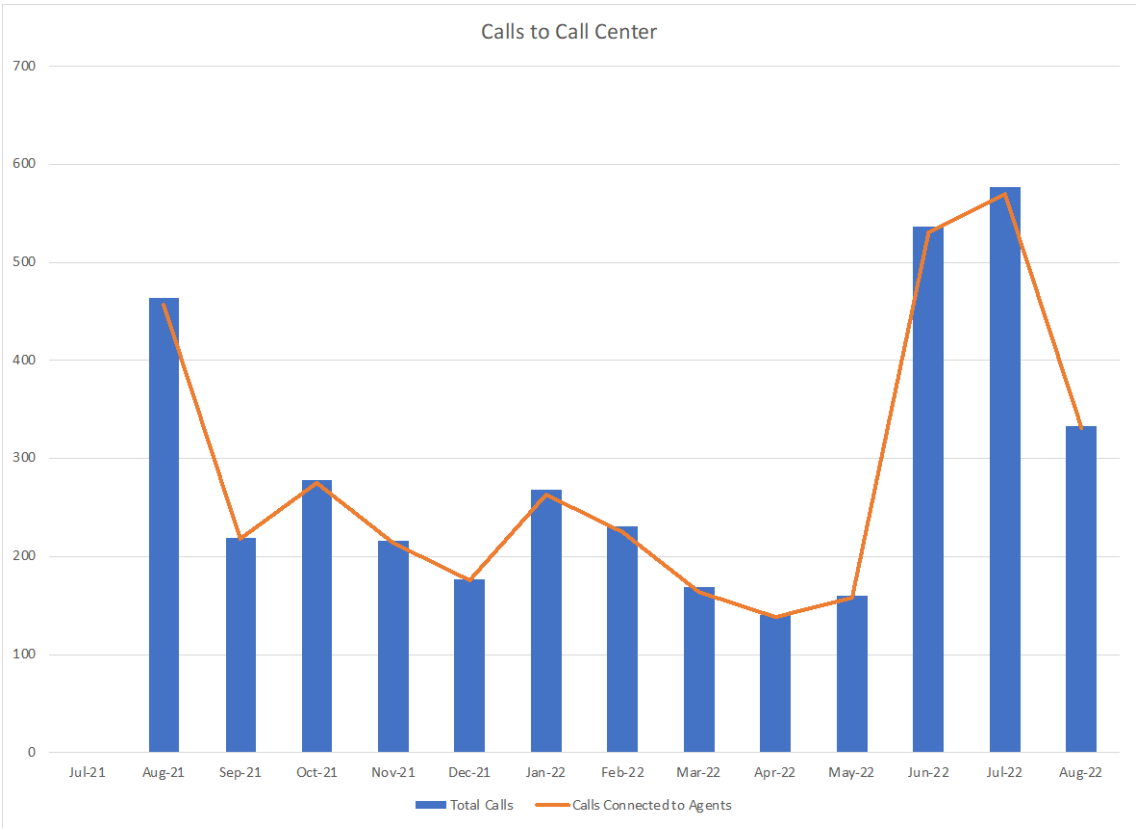
Year-Ahead Resource Adequacy Filing to include Oceanside & Vista	April 2023	
Marketing & Outreach – Oceanside & Vista	November 2023 – April 2024	
Default Power Supply Selection – Oceanside & Vista	November 2022	
Noticing – Oceanside & Vista	February/March/May/June 2024	

Risk Oversight Committee

Pursuant to CEA's Energy Risk Management Policy, the Risk Oversight Committee met September 1, 2022. The Committee reviewed CEA's recent procurement activity, current portfolio positions and future procurement targets, and portfolio mark to market and counterparty exposure. The Committee confirmed that CEA is in compliance with its Energy Risk Management Policy. The next meeting of the Committee is scheduled for December 1, 2022.

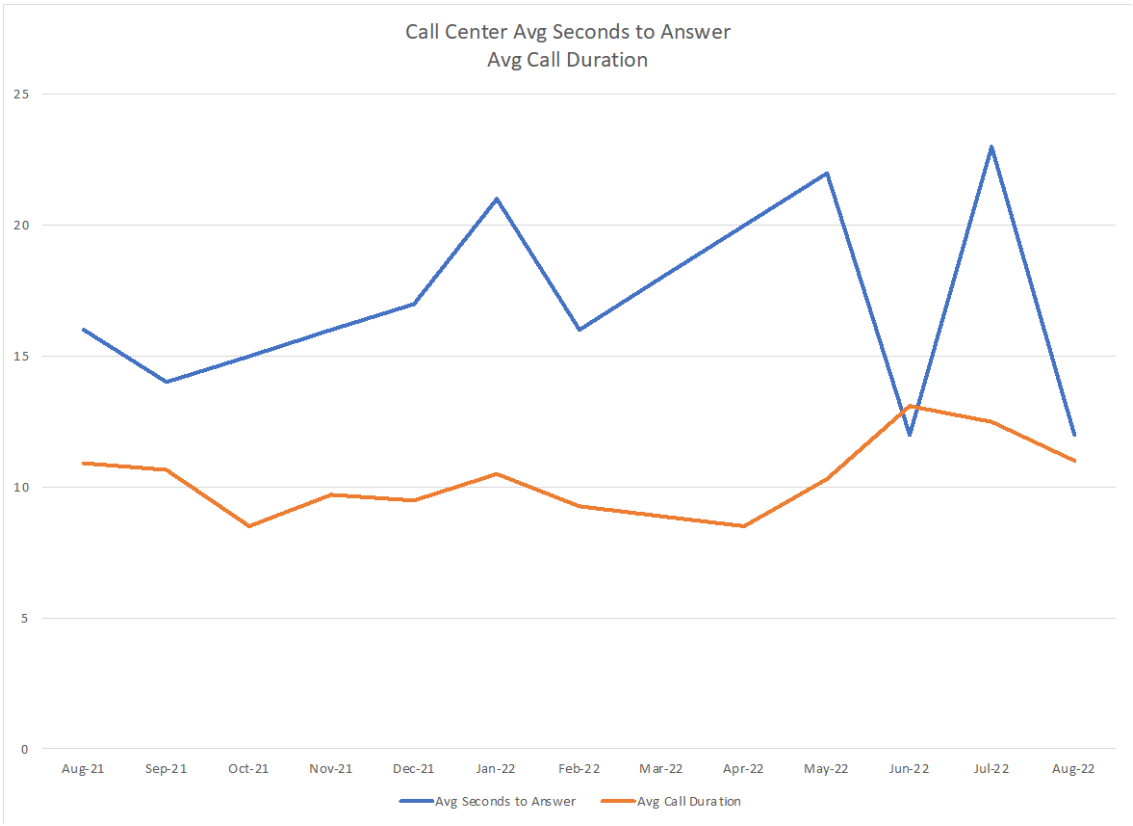
Call Center Activity

The charts below reflect customer activity through August 31, 2022:



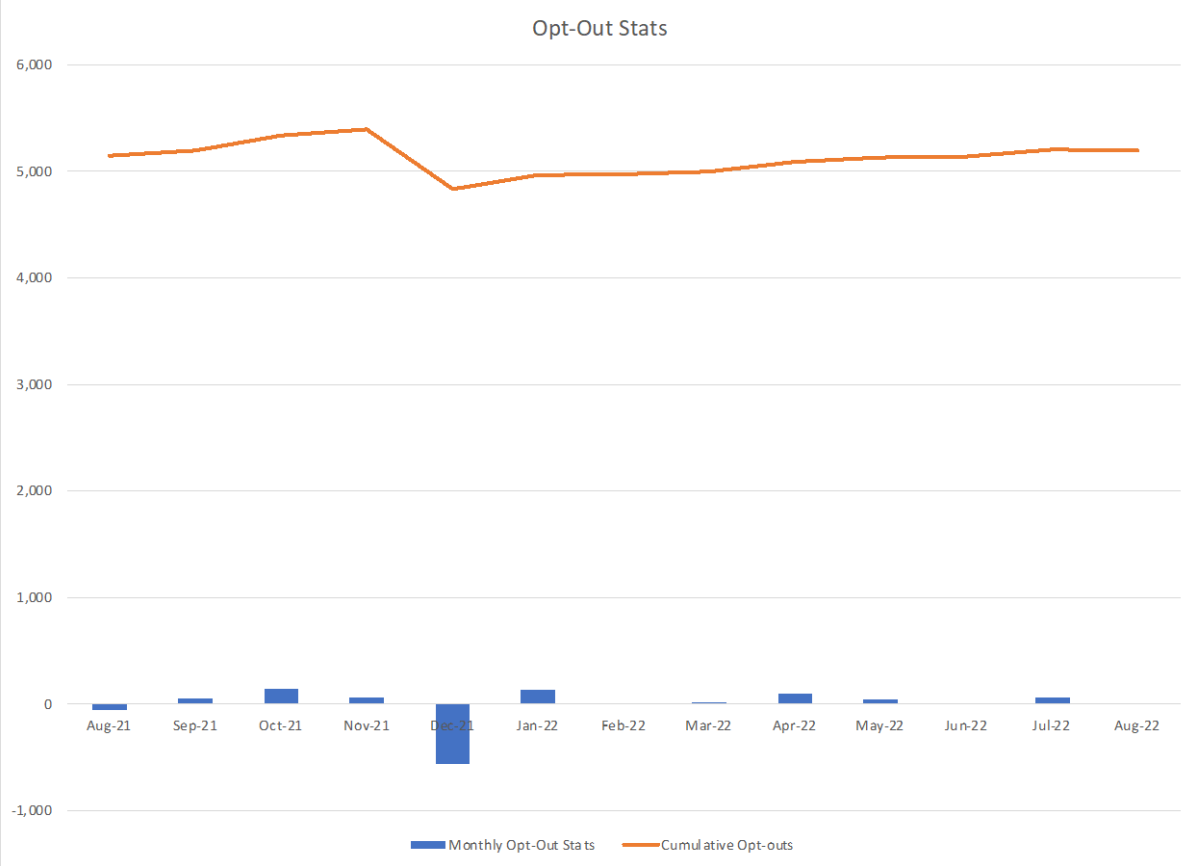
The call center experienced a drop off in calls, which were primarily related to net energy metering questions.

The chart below reflects call center average seconds to answer and average call duration:



Calls are being answered within an average of 11 seconds and lasting an average 10 minutes.

The following chart reflects the monthly and cumulative opt-outs for CEA.



CEA realized a slight net decrease in opt outs in August with an overall participation rate of 92.22%.

The following chart reflects enrollments in CEA's power supply products:

POWER SUPPLY PRODUCT	JULY 2022	AUG 2022	Net Change
Clean Impact – 50% Renewable	158	163	+ 5
Clean Impact Plus - 75% Carbon Free	59,342	59,335	- 7
Green Impact – 100% Renewable	407	413	+ 6
TOTAL ACCOUNTS	**59,907**	**59,911**	**+4**

Contracts $50,000 - $100,000 entered into by Chief Executive Officer

VENDOR	DESCRIPTION	AMOUNT
NONE		

REGULATORY UPDATE

CEA's regulatory attorney, Ty Tosdal, will provide an update to the Board on current regulatory activities (Attachment A).

FISCAL IMPACT

There is no fiscal impact by this action.

ATTACHMENTS

Attachment A – Tosdal APC Regulatory Update Report

CEA Regulatory Update

September 22, 2022

Tosdal APC

Overview

- **Legislative Review**
  - **Senate Bill 846 (Diablo Canyon)**
  - **Assembly Bill 1279 (GhG Target)**
  - **Senate Bill 1020 (Renewables Targets)**
- **PCIA: Changes to Methodology**

Senate Bill 846 (Diablo Canyon)

Senate Bill 846 has passed. Diablo Canyon will remain open.

- Invalidates prior decision of the CPUC granting PG&E's request to retire the plant.
- Orders the CPUC to establish new retirement dates, consistent with new NERC permit.
- Requires all customers to pay non-bypassable charges based on gross consumption.
- Changes Integrated Resource Plan (IRP) requirements.
- State of California will extend a $1.4 billion loan to PG&E.

Next Steps

- PG&E applies for permit with NERC.
- State establishes loan fund and Independent Safety Committee.
- CPUC ordered to reopen Application 16-08-006 and address issues.
    - CPUC prohibited from authorizing operations beyond 2029 (Unit 1) and 2030 (Unit 2).
- Several other CPUC decisions will be revisited, including various procurement reliability proceedings.

Assembly Bill 1279 (GhG Target)

Greenhouse Gas Policy

SB 1279 provides that it is state policy to do the following:

(1) Achieve net zero greenhouse gas emissions as soon as possible, but no later than 2045, and to achieve and maintain net negative greenhouse gas emissions thereafter. This goal is in addition to, and does not replace or supersede, the statewide greenhouse gas emissions reduction targets in Section 38566.

(2) Ensure that by 2045, statewide anthropogenic greenhouse gas emissions are reduced to at least 85 percent below the statewide greenhouse gas emissions limit established pursuant to Section 38550.

Definition of *Net Zero Greenhouse Gas Emissions*

For purposes of this section, “net zero greenhouse gas emissions” means emissions of greenhouse gases, as defined in subdivision (g) of Section 38505, to the atmosphere are balanced by removals of greenhouse gas emissions over a period of time, as determined by the state board.

CARB Implementation

The state board shall work with other state agencies to:

(1) Ensure that updates to the scoping plan required pursuant to Section 38561 identify and recommend measures to achieve the policy goals stated in subdivision (c).

(2) *Identify and implement a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture, utilization, and storage technologies* in California to complement emissions reductions and achieve the policy goals stated in subdivision (c).

Note: Operation of bill is contingent on passage of SB 905, authorizing CARB to launch a carbon capture and sequestration program.

Senate Bill 1020 (Renewables Targets)

Existing law provides that it is the policy of the state that renewable and zero-carbon energy resources supply 100% of all retail sales of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045.

SB 1020 revises state law to instead provide that it is the policy of the state that renewable and zero-carbon energy resources supply the following:

- **90%** of all retail sales of electricity to California end-use customers by December 31, **2035.**
- **95%** of all retail sales of electricity to California end-use customers by December 31, **2040.**
- **100%** of all retail sales of electricity to California end-use customers by December 31, **2045.**

State agencies must reach 100% renewable and zero-carbon energy supply sooner than other customers:

- **100%** of electricity procured to serve all state agencies by December 31, **2035.**

PCIA: Changes to Methodology

Energy Division released a proposal to incorporate long-term fixed price (LTFP) and Short-Term Index Plus (STIP) transactions into the RPS benchmark used for the PCIA.

- Requires changes to the PCIA calculation and data collection.
- Potential adverse PCIA effects may result due to addition of long-term fixed price contracts.

CalCCA opposes incorporating LTFP transactions into the RPS benchmark.

- Transactions are not currently included in the RA or energy benchmarks.
- Method is complex and artificial because it requires extracting a value from a contract, not the stated price.
- May result in negative RPS values while prices for resources are trading at $13-17 per MHW.

Remaining methodological issues:

- Whether GHG-free resources are under-valued in the PCIA, and if so, whether to adopt an adder or allocation mechanism;
- Whether to modify the calculation of the PCIA energy index MPB; and
- Whether to modify or clarify the calculation of the PCIA for Voluntary Allocation or Market Offer transactions.

QA

CLEAN ENERGY ALLIANCE

Staff Report

DATE: September 22, 2022

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 6: Consider Approval of 15-Year Power Purchase Agreement with Cape Generating Stations 1 LLC

RECOMMENDATION

Approve 15-Year Power Purchase Agreement with Cape Generating Station 1 LLC for geothermal renewable energy for an amount not to exceed $38,200,000. Authorize the Chief Executive Officer to execute all documents, subject to Transactions Attorney approval.

BACKGROUND AND DISCUSSION

California Public Utilities Commission (CPUC) Decision 21-06-035 required all load serving entities, including community choice aggregators, to procure additional resources for replacement of Diablo Canyon, among other requirements. The CPUC Decision requires:

- Project online by 8/1/2023, 6/1/2024, 6/1/2025 or 6/1/2026, with a preference for an earlier date;
- Available for a term of at least 10 years;
- Must be non-fossil fueled;
- Requires new build baseload renewable energy which is either geothermal or biomass.

Pursuant to the Decision, Clean Energy Alliance joined with Desert Community Energy and California Choice Energy Authority in issuing a joint solicitation in December 2021. The solicitation garnered responses representing over 80 projects. The responses were further refined based on price, location, and eligibility (short-list). Due to the competition that was created by the requirement of all LSEs, many of the short-listed projects either withdrew from the procurement process or changed the terms of their proposal.

One of the short-listed projects is a project proposed by Cape Generating Station 1, LLC. The project meets the procurement requirements as established by the CPUC Midterm Reliability Procurement requirement. The terms of the proposed agreement are for a period of fifteen (15) years, to begin delivering June 1, 2026, for a total amount not to exceed $38,200,000.

Staff recommends the Board authorize the Chief Executive Officer to execute the final agreement, subject to the Transactions Attorney approval.

FISCAL IMPACT

The costs related to the procurement have been factored into the financial pro-forma.

ATTACHMENTS

Redacted Draft Power Purchase Agreement with Cape Generating Station 1 LLC

PROPOSED EXECUTION VERSION

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Cape Generating Station 1 LLC, a Delaware limited liability company ("**Seller**")

Buyer: Clean Energy Alliance, a California joint powers authority ("**Buyer**")

Description of Facility: A dynamic resource-specific system resource geothermal renewable electricity generating facility located in Beaver County, Utah, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	[redacted]
CEC Pre-Certification Obtained	
Documentation of Conditional Use Permit if required: [ ] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	June 1, 2026

Delivery Term: Fifteen (15) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	
3	
4	

5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		

Buyer's Contract Capacity:

Guaranteed Capacity:

Contract Price: The Contract Price of the Product shall be:

Contract Year	Contract Price
1 - 15	

Product: Buyer's Share of:

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Facility Energy
- ☒ Capacity Attributes
  - ☐ Energy Only Status
  - ☒ Resource Specific Import RA
- ☒ Ancillary Services
- ☒ Incremental Resource Compliance

Scheduling Coordinator: Seller /Seller Third Party

Development Security and Performance Security:

Development Security: per MW of Buyer's Contract Capacity

Performance Security: per MW of Buyer's Contract Capacity

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Exhibit K	Form of Letter of Credit
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Exhibit T	Form of Hourly Meter and E-Tag Reconciliation Report

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 2022 (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, permit, construct, own, control and operate the Facility; and

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

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

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

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

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Facility.

"**Available Generating Capacity**" means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

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

"**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. Pacific Standard Time (PST) for the Party sending a Notice, or payment, or performing a specified action.

"**Buyer**" means Clean Energy Alliance, a California joint powers authority.

"**Buyer's Contract Capacity**" has the meaning set forth on the Cover Sheet

"**Buyer Default**" means an Event of Default of Buyer.

"**Buyer's Share**" means the percentage equal to the result of dividing the Buyer's Contract Capacity by the Installed Capacity.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**CAISO**" means the California Independent System Operator Corporation, or any successor entity performing similar functions.

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

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

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

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107

(2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**CEC**" means the California Energy Commission, or any successor agency performing similar statutory functions.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

"**CEQA**" means the California Environmental Quality Act.

"**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, at least fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns at least 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 equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and 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.

"**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy.

"**Claim**" has the meaning set forth in Section 16.2.

"**COD Certificate**" has the meaning set forth in Exhibit B.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount for each day of delay equal to the Development Security [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.12.

"**Compliance Costs**" has the meaning set forth in Section 3.12.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12.

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to the Development Security divided by [redacted]

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Term**" has the meaning set forth in Section 2.1(a).

"**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.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**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.

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner 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 Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

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

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

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security.

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

"**Day-Ahead Market**" has the meaning set forth in the CAISO Tariff.

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dedicated Interconnection Capacity**" has the meaning set forth in Section 4.10.

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

"**Deficient Month**" has the meaning set forth in Section 4.8(d).

"**Delay Damages**" means Construction Delay Damages and Commercial Operation Delay Damages.

"**Delivery Point**" means [redacted] or such other point of delivery as may be designated by the Parties from time to time pursuant to Section 3.7.

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

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

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

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

"**Dynamic Imports Operating Agreement**" means an agreement between the CAISO and the host Balancing Authority for the Facility that enables Dynamic Schedules from the host Balancing Authority to the CAISO Balancing Authority, which may be in the form of the agreement referred to in the CAISO Tariff as the "Dynamic Scheduling Host Balancing Authority Operating Agreement" or (b) an alternative agreement, reasonably acceptable to the CAISO and consistent with the CAISO Tariff, governing the terms of dynamic transfers between CAISO and the host Balancing Authority for the Facility and enabling Dynamic Schedules pursuant to this Agreement.

"**Dynamic Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dynamic Resource-Specific System Resource**" has the meaning in the CAISO Tariff

"**Dynamic Scheduling Agreement**" has the same meaning as that set forth in the CAISO Tariff for "Dynamic Scheduling Agreement for Scheduling Coordinators".

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses or gains between the Facility and the Delivery Point, including losses or gains associated with delivery of Facility Energy to the Delivery Point.

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

"**Energy**" means electrical energy, measured in MWh.

"**E-Tag**" has the meaning set forth in the CAISO Tariff.

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

"**Excess Energy**" has the meaning set forth in Exhibit C.

"**Executed Interconnection Agreement Milestone**" means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Expected Construction Start Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

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

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

"**Facility Meter**" means the CAISO Approved Meter that will measure all Energy generated by the Facility, including Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, the Facility Meter may be located at the low voltage or the high voltage side of the main step up transformer, and Facility Energy will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

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

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

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

"**Forward Certificate Transfers**" has the meaning set forth in Section 4.8(a).

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision,

program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

"**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*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to Energy generated by the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits,

or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity in the amount set forth on the Cover Sheet.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Energy Production**" means ninety percent (90%) of the total Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

"**Guaranteed RA Amount**" is equal to the Qualifying Capacity associated with the Buyer's Contract Capacity, as such Qualifying Capacity is calculated under counting rules and methodologies in effect and modified by the CPUC or CAISO from time to time during the Contract Term.

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

"**Guaranty**" means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

"**Hourly Contract Quantity**" means the quantity of Facility Energy for each hour reasonably capable of being generated by the Facility that is attributable to the Buyer's Contract Capacity, as may be adjusted pursuant to Section 4.4.

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

"**Incremental Resource Compliance**" means all rights to show the Facility as an incremental resource for compliance purposes under CPUC D.21-06-035, including as a long lead-time resource as described in Ordering Paragraph 2 thereof.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1(a).

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed Capacity**" means the actual generating capacity of the Facility, as measured in MW(AC) at the Interconnection Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, as evidenced by a certificate substantially in the form attached as Exhibit I hereto. Buyer acknowledges that Seller may increase the Installed Capacity after the Commercial Operation Date and Seller will provide an updated certificate of Installed Capacity to Buyer promptly upon any increase in Installed Capacity.

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

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

"**Interconnection Point**" has the meaning set forth in Exhibit A.

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

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

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

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

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated November 4, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or

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

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) 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 or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"**Local Capacity Area**" has the meaning set forth in the CAISO Tariff.

"**Local Capacity Area Resources**" has the meaning set forth in the CAISO Tariff.

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

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

"**Lost Output**" means the amount of Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer due to Planned Outages not to [redacted] per Contract Year, Force Majeure Events, System Emergency, and

non-economic curtailments by any transmission or interconnection provider, including Curtailment Orders, multiplied by Buyer's Share.

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

"**Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than Zero dollars ($0).

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

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

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

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

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**Notification Deadline**" for a given Showing Month shall mean twenty (20) Business Days before the applicable compliance deadline for the submission of an annual or monthly CAISO Supply. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan.

"**NP 15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

"**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit O.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" means each Contract Year during the Delivery Term.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or a (iii) a Guaranty, in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than [redacted] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility with a generating capacity of at least twenty (20) MW, 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**" has the meaning set forth in Section 4.6(a).

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Portfolio Content Category**" means PCC1, PCC2 or PCC3, as applicable.

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1) and California Public Utilities Commission Decision 11-12-052, as may be amended from time to time or as further defined or supplemented by Law.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry

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

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

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Capacity**" has the meaning set forth in the CAISO Tariff.

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

"**RA Guarantee Date**" means the date that is sixty (60) days after the Commercial Operation Date.

"**RA Shortfall Amount**" has the meaning set forth Section 3.8(b).

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8 any Showing Month during which there is an RA Shortfall Amount.

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity or hourly expected Facility Energy delivered by or on behalf of Seller pursuant to Section 4.3(c).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Remedial Action Plan**" has the meaning in Section 2.4.

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

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any

way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, located within NP 15 or SP 15, compliant with the requirements of D.21-06-035, as well as meeting the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area as the Facility.

"**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 includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 14-06-050, 19-10-021, 20-06-028, 22-06-050 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**Resource Specific Import RA**" means a resource that is listed on the CPUC's Net Qualifying Capacity list and is either Pseudo-Tied or Dynamic Resource-Specific System Resource into the Day-Ahead Market and Real-Time Market, and which satisfies all other applicable requirements under the Resource Adequacy Rulings, including CPUC Decisions 05-10-042 and 20-06-028.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

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

"**Scheduled Energy**" means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), 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's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

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

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

"**Settlement Point**" has the meaning set forth in Exhibit A.

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

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A.

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

"**SP 15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

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

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or

property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid from the Delivery Point.

"**Ultimate Parent**" means Fervo Energy Company.

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

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(d).

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

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

(e) a reference to a document or agreement, including this Agreement means 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 term "including" means "including 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) 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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); provided, however, that 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 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has 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, Dynamic Scheduling Agreement, Dynamic Imports Operating Agreement, and, if applicable, a Meter Service Agreement between Seller, Seller's Scheduling Coordinator or the Balancing Authority for the Facility and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO 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 required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being complete prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE

service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has completed all CAISO requirements for delivery of Energy from the Facility to the CAISO Grid, including as may be required under Seller's Participating Generator Agreement, Dynamic Scheduling Agreement, Dynamic Imports Operating Agreement, and, if applicable, Meter Service Agreement;

(h) Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(i) Seller (or its Affiliate, if a sharing arrangement permitted by this Agreement is in effect) has obtained all real property rights, including Site Control, required for the operation of the Facility during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

(j) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer;

(k) Seller has certified in writing to Buyer that Seller has complied with the Workforce Requirements in Section 13.4 and provided reasonably requested documentation demonstrating such compliance as set forth in Section 13.4;

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

(m) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Construction Delay Damages, and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports**. Following the Effective Date, Seller shall provide a Progress Report to Buyer every three months until the Expected Construction Start Date, and after the Expected Construction Start Date, Seller shall provide a monthly Progress Report to Buyer for each calendar month until the Commercial Operation Date and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly 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 reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail

any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone; provided, that if Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.

2.5 **Reserved**.

[redacted]

[redacted]

[redacted]

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**.

(a) In accordance with and subject to the terms and conditions of this Agreement, at all times during the Delivery Term Seller shall sell and deliver to Buyer at the

Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, the Facility Energy delivered to the Delivery Point and the Product produced by or associated with the Facility Energy.

(b) Notwithstanding the foregoing:

(i) Seller's obligation to sell and deliver Facility Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, or (B) a Curtailment Period; provided that such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement, (or as necessary to maintain health and safety pursuant to Section 6.2;

(ii) Buyer's obligation to accept Facility Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, or (B) a Curtailment Period; and

(iii) Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, or (C) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1.

(c) Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale in the market or to any third party, and retain and receive any and all related revenues.

(d) Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Compensation**. Buyer shall pay Seller for the Product in accordance with Exhibit C.

3.3 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy.

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

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes associated with the Product, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Additional Products**. The Parties acknowledge and agree during the Delivery Term, new or incremental opportunities may arise for the sale or transfer of additional products from the Facility that are not currently known to or contemplated by the Buyer or Seller, including reactive power, and additional ancillary services (collectively, "**Additional Products**"). In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for Buyer's Share of such Additional Products, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim Buyer's Share of such Additional Products, the Parties shall determine the necessary actions and additional costs associated with such Additional Products. Seller shall have no obligation to alter the Facility or change the Operating Restrictions unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for Buyer's Share of all costs, losses, and liabilities associated with such alteration. The Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of Buyer's Share of such Additional Products, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement, require Seller to make material modifications to the Facility or material upgrades or other material modifications to any interconnection or transmission facilities (other than those for which Buyer has agreed to fund), require Seller to reduce the generation of Facility Energy and delivery thereof to the Interconnection Point (or restrict Seller's flexibility in offering, bidding, planning and scheduling such energy), or interfere with qualification, offering, bidding, planning, scheduling or other disposition of Green Attributes.

For greater clarity, the CPUC has adopted a Slice of Day reform (D.22-06-050), which may result

in changes to the Resource Adequacy Benefits. These additional attributes shall be deemed part of the Capacity Attributes, as well as any further CPUC clarification or modification of the Slice of Day reforms, and will not be considered Additional Products.

3.7 **Capacity Attributes**. Seller shall be responsible for the cost and installation of any Network Upgrades and all costs associated with securing firm transmission service to deliver Facility Energy to the Delivery Point as required to obtain Resource-Specific Import RA status from this Dynamic Resource-Specific System Resource.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility up to the Buyer's Contract Capacity.

(b) Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility up to the Buyer's Contract Capacity during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes associated with Buyer's Contract Capacity, if any, existing during the Delivery Term.

(c) Throughout the Delivery Term, Seller shall maintain firm transmission service rights from the Facility to the CAISO and shall perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(d) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes committed to Buyer, if any, and Seller shall not report to any person or entity that such Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that Capacity Attributes belong exclusively to Buyer.

(e) For the duration of the Delivery Term, Seller shall take all 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, including submitting Supply Plans in accordance with CAISO and CPUC requirements.

(f) No later than the Notification Deadline corresponding to the Showing Month of the Delivery Term, Seller shall submit, or cause the Facility's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Resource Adequacy Benefits for Buyer for each Showing Month. Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans have been accepted by the CAISO. If CAISO rejects either the Supply Plan or Buyer's Resource Adequacy Plans with respect to the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable compliance deadlines.

(g) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Attributes are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Attributes, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy Benefits; provided that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(h) At all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer; provided, however, that Seller has no obligation to provide any Ancillary Services that would require a change in the Facility's operations.

(i) Either Party may request a change to the Delivery Point, subject to the prior written approval of the other Party, with such approval not to be unreasonably withheld, conditioned or delayed.

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (A) the Guaranteed RA Amount for such month, minus (B) the Net Qualifying Capacity for such month able to be shown on Buyer's monthly RA Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits, and if applicable, Local Resource Adequacy (the "**RA Shortfall Amount**"), *multiplied by* [redacted] *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA to Buyer in an amount equal to all or a portion of the RA Shortfall Amount, provided that the Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M prior to the Notification Deadline, and further provided that such Replacement RA shall be required to comply with the requirements of D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, only to the extent required for the Product

purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties.

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

3.10 **CPUC Mid-Term Reliability Requirements**.

(a) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC D.21-06-035. Seller represents and warrants to Buyer that commencing on the Effective Date and continuing throughout the Contract Term:

(i) The Facility is a new energy generating resource or new resource expansion that is located within the WECC and that is considered by the State of California to have zero greenhouse gas emissions in accordance with the Cap and Trade Regulations;

(ii) Seller has the right to sell the Product from the Facility;

(iii) The Product complies with all eligibility and counting rules of the resource adequacy program, including but not limited to import rules associated with the resource adequacy program, in place as of the date of execution of this Agreement;

(iv) The Product includes the exclusive right to claim Buyer's Contract Capacity of the Facility as an incremental resource for purposes of CPUC D.21-06-035;

(v) The Facility meets the requirements for a long lead-time resource as defined in Ordering Paragraph 2 of CPUC D.21-06-035, including that such resource has no on-site emissions or otherwise qualifies under the California Renewable Portfolio Standard (RPS) program eligibility rules as PCC1, has at least an eighty percent (80%) annual capacity factor, is not use limited or weather dependent, and is incremental to the CPUC's baseline list;

(vi) Seller has not sold the Product, including the right to claim Buyer's Contract Capacity as an incremental resource for purposes of CPUC D.21-06-035, to any other person or entity; and

(vii) The Product is free and clear of all liens and other encumbrances.

(b) In furtherance of Buyer's compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations, including but not limited to the following:

(i) Evidence of interconnection, site control, notice to proceed with construction, and other evidence of construction status and progress towards Commercial Operation;

(ii) Engineering assessments demonstrating that the Facility has at least an eighty percent (80%) annual capacity factor; and

(iii) Any other engineering assessments, contractual support, or other documentation required or requested by the CPUC to demonstrate the Facility meets the requirements of CPUC D.21-06-035 and related decisions and guidance.

3.11 **Non-Modifiable Standard Terms and Conditions**.

(a) Eligibility: Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

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

(c) Tracking of RECs in WREGIS: Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

3.12 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio

Standard and Capacity Attributes to meet various compliance requirements, and that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions from time to time to implement a change in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the Agreement to reflect any mandatory contractual language required by Governmental Authorities, including changes to the definition of Green Attributes and Capacity Attributes, or as may be required pursuant to CPUC D.21-06-035; (ii) require submission of any reports, data, or other information required by Governmental Authorities; (iii) provide additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; (iv) satisfy new compliance requirements of Governmental Authorities; or (v) take any other actions that may be requested by Buyer to assure that the Generating Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), 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 such Compliance Actions shall be capped at [redacted] of Buyer's Contract Capacity (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

(d) 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 Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Term.

(e) 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.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Facility Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Facility Energy through Dynamic Schedules, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. The Facility Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

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

4.2 **Title and Risk of Loss**.

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

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

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Available Generating Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) by September 15th of the prior calendar year for every subsequent Contract Year during the Delivery

Term, Seller shall provide to Buyer a non-binding forecast of each month's expected Available Generating Capacity, for the following calendar year.

(b) Monthly Forecast of Facility Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the expected Facility Energy and Available Generating Capacity for the month.

(c) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

4.4 **Hourly Contract Quantity**. During the Delivery Term, Seller shall use reasonable efforts to deliver at least the Hourly Contract Quantity (but not to exceed the Facility Energy) to Buyer, provided that Seller may adjust the Hourly Contract Quantity on a reasonable and pro-rata basis for (a) Planned Outages, Force Majeure Events, System Emergency, and non-economic curtailments by any transmission or interconnection provider, including Curtailment Orders, and (b) to reflect reasonably anticipated changes in Facility Energy due to ambient temperatures.

4.5 **Reserved**.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, in any Contract Year, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, (a "**Planned Outage**"). Seller shall have ability to take a non-emergency outage during the period of June 1st and September 30th provided that CAISO approves such outage and Seller provides Replacement RA to Buyer. The Planned Outages in any Contract Year shall not exceed [redacted] hours.

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

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

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

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

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Adjusted Energy Production in MWh equal to no less than the Guaranteed Energy Production. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **WREGIS**. Seller shall, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data and matching E-Tags associated with the Dynamic Schedules. Seller shall ensure that no WREGIS Certificates are transferred to Buyer's WREGIS Account unless they are the result of Facility Energy and matched with E-Tags associated with the Dynamic Schedules. WREGIS Certificates without matching E-Tags will be rejected.

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

4.9 **Green-e Certification**. Seller shall execute all documents or instruments reasonably required by Buyer in order for the Facility to be eligible for Green-E certification.

4.10 **Interconnection Capacity**. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System. Seller shall ensure that throughout the Delivery Term that (a) the Facility will have and maintain interconnection capacity available or allocable to the Facility under the Interconnection Agreement that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under the Interconnection Agreement to interconnect the Facility with the grid and to allow Seller to dispatch the Facility in accordance with the relevant tariff and as contemplated under this Agreement, including with respect to Resource Adequacy (collectively, the "**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the Dedicated Interconnection Capacity.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with

respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if 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 within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes 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*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

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

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity, (ii) continue to provide for separate metering and a separate Resource ID for the Facility, and (iii) shall not allow any Affiliate of Seller or third party to use the Dedicated Interconnection Capacity if such use would have an adverse impact on Buyer's rights under this Agreement. Seller shall hold

Buyer harmless from any losses from under this Agreement resulting from a third party's use of the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Seller's Scheduling Coordinator shall cooperate to allow both Buyer to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use reasonable efforts to deliver an invoice to Buyer within fifteen (15) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy produced by the Facility as set forth in the first CAISO settlement statement for the prior month that includes meter data from the Approved Meter; (b) the applicable Contract Price; (c) a reconciliation in .xlsx format of hourly meter data, E-Tag data and associated calculations, including the lesser of each by hour in the format set forth in Form of Hourly Meter and E-Tag Reconciliation Report attached as Exhibit T, or as otherwise requested by Buyer, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (d) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Schedules, and (e) any additional information reasonably requested by Buyer. Seller shall provide Buyer access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any

amount. Each invoice shall be in an electronic format specified by Buyer (e.g., PDF, .xlsx).

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; provided, however, that changes to invoice, payment, wire transfer and other banking information in the Agreement must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Agreement. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice, or the end of the prior monthly billing period, whichever is later. 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 the lowest Secured Overnight Financing Rate (SOFR) rate as most recently published prior to the date of the invoice, 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 ten (10) Business 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; provided, however, that except to the extent recognized by and resulting in an adjustment by CAISO, there shall be no adjustments to prior invoices based upon meter inaccuracies. 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 Exhibit B, 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 may replace Development Security or change the form of Development Security to another permitted form of Development Security from time to time upon reasonable prior written notice to Buyer. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may replace Performance Security or change the form of Performance Security to another permitted form of Performance Security from time to time upon reasonable prior written notice to Buyer. If the Performance Security is a Guaranty, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller

then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

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

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

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

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

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

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

ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; 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. Notices of an Event of Default, or any event or circumstance that if not cured within the applicable cure period would become an Event of Default, must be sent by United States mail, overnight delivery carrier, hand delivery, express courier, or personal delivery.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

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

(b) Without limiting the generality of the foregoing, so long as the following events otherwise satisfy the requirements of a Force Majeure Event as defined above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including

in connection with efforts occurring after the Effective Date to combat the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**"); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (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 except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under Agreement pursuant to the Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented 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. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or Section 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

10.3 **Notice**. Within two (2) Business Days of knowledge of commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of the Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods of time prior to delivery of such notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by

the Force Majeure.

10.4 **Termination Following Force Majeure Event**. 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, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or 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 five (5) 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) days 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 such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as 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 during the Delivery Term, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within [redacted] after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(iv) the failure by Seller to achieve Construction Start within [redacted] after the Guaranteed Construction Start Date;

(v) if, in any [redacted] period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at [redacted] of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the [redacted]; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [redacted] 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;

(vi) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [redacted] of the total Expected Energy amount for such Contract Year;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least [redacted] of the total Expected Energy amount for such period;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) 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, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) and Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. 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 (a) 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, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) 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 the Damage Payment or Termination Payment (as applicable) as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment 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 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**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, 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, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where an express and exclusive remedy or measure of liquidated damages is provided, 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.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, including to the extent applicable, Seller or an Affiliate will be the applicant on any CEQA documents.

(g) Seller shall maintain site control of the Facility throughout the Delivery Term.

(h) Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). The Parties acknowledge that pursuant to the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

(i) Seller shall maintain firm transmission rights sufficient to deliver the Buyer's Contract Capacity to the Delivery Point throughout the Delivery Term.

(j) Seller shall comply with all CAISO Tariff requirements applicable to a Dynamic Resource-Specific System Resource, including Appendix M to the Tariff, throughout the Delivery Term.

(k) As of the Effective Date, Seller represents and warrants to Buyer that it has not received notice from or been advised by any existing or potential supplier or service provider for the Facility 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 Commercial Operation Date to be later than the Expected 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, 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 (provided that such court is located within a venue permitted in law and under the Agreement), (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; provided, however that nothing in this Agreement

shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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 California and 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, approvals, and permits 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.

13.5 **Reserved**.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided 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. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall have no obligation to

provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. 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 Lenders to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(a) Buyer shall give notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller (or Lender, if Lender has provided the notice set forth in subsection (b) above) to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

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

(e) Lender will receive prior notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the transfer date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements, or which are otherwise personal to Seller), or

(ii) Not assume this Agreement.

(g) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement arising after the date of such assumption as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee;

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for

the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld; and

(i) The Parties shall negotiate any Collateral Assignment Agreement in good faith, including variations to the provisions set forth in this Section 14.2, and to the extent the Collateral Assignment Agreement executed by Buyer and Lender varies from such provisions, the terms of such Collateral Assignment Agreement shall be controlling. In addition, Buyer shall cooperate with Seller or any Lender to execute or arrange for delivery of estoppels reasonably requested by Seller or Lender.

14.3 **Reserved**.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Venue**. 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 Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Diego County, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, then 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.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnity**. Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, 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 (collectively, "**Indemnifiable Losses**"). Nothing in this Section 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 obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining

knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any

and all claims of Indemnifying Party against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such third party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), 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 Five Million Dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000) 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 California Law.

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date,

Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Contractor Insurance. Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. The contractor shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). The contractor shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least ten (10) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

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) pricing and other commercially sensitive 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. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system

operator request or rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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 in this Article 18. 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 Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Lender, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

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

ARTICLE 19
MISCELLANEOUS

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

Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

19.7 **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.

19.8 **Counterparts; Electronic Signatures**. 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. The Parties may rely on electronic and scanned signatures as originals. Delivery of an executed signature page of this Agreement by a PDF attachment to an email shall be the same as delivery of an original executed signature page.

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 or 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 **Further Assurances**. Each of the Parties hereto agree 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.

CAPE GENERATING STATION 1 LLC, a Delaware limited liability company	**CLEAN ENERGY ALLIANCE, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Cape Station

Federal Lease IDs (portions of): [redacted]

County: Beaver County, Utah

Type of Facility: Geothermal

Operating Characteristics of Facility: Binary cycle geothermal power plant

Delivery Point: [redacted] or such other point of delivery as may be designated by the Parties from time to time pursuant to the Agreement.

Settlement Point: SDGE default Load Aggregation Point (DLAP)

Participating Transmission Owner: Longroad Energy

Interconnection Point: The Facility shall interconnect to the Milford Wind Line (or such other location as mutually agreed to by the Parties prior to execution of the Agreement).

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. "**Construction Start**" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) 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 (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2 b. of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The "**Commercial Operation Date**" shall be the later of (x) sixty (60) days prior to the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

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. If Seller achieves the Commercial Operation Date by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded by Buyer.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. Commercial Operation Delay Damages shall be paid in advance on a monthly basis by Seller to Buyer. A prorated amount of Commercial Operation Delay Damages will be returned to Seller if the Commercial Operation Date occurs during a month in which the Commercial Operation Delay Damages were paid in advance. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

d. Notwithstanding any provision in this Agreement to the contrary, if the Commercial Operation Date has not occurred by [redacted], upon the prior written request of Buyer, Seller shall use commercially reasonable efforts to deliver to Buyer Resource Adequacy Benefits from a resource other than the Facility in a quantity not to exceed the Guaranteed RA Amount ("**Bridge Capacity**"), subject to the following terms and conditions:

1. Seller shall be responsible for the cost of the Bridge Capacity, except that (i) the amount of Commercial Operation Delay Damages that would otherwise be owed by Seller during any such period of delivery of Bridge Capacity shall be reduced on a pro rata basis to reflect the quantity (in MW) of Bridge Capacity delivered to Buyer, and (ii) if the total cost of such Bridge Capacity for a Showing Month, including the costs and expenses incurred by Seller to procure such Bridge Capacity, is greater than the amount of Commercial Operation Delay Damages that would have otherwise been paid by Seller during such time period, Buyer will credit or reimburse Seller for all reasonable and documented out of pocket costs in excess of such amount.

2. Bridge Capacity shall be required to comply with all applicable requirements of CPUC D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035.

3. The Parties shall cooperate in good faith on arrangements for such Bridge Capacity.

4. The Bridge Capacity must (i) be accepted by the CAISO; and (ii) otherwise satisfy the requirements of this Agreement.

5. Seller shall, or shall cause the SC to submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Buyer's Compliance Showings.

6. Neither Party will be obligated to deliver or pay for any such Bridge Capacity until both Parties have consented to the terms and conditions of such delivery in writing.

3. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any delays arising out of the following circumstances:

a. a Force Majeure Event occurs;

b. Seller is unable to acquire material permits, consents, licenses, approvals or authorizations from any Governmental Authority required for Seller to construct, interconnect, or operate the Facility due to reasons outside of the reasonable control of Seller; or

c. the Interconnection Facilities or 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, due to reasons outside of the reasonable control of Seller.

Notwithstanding anything to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed [redacted] for any reason, including a Force Majeure Event. No extension shall be given under the Development Cure Period if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) for extensions for a Force Majeure Event under subsection (a) above, if the delay does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3, or (iii) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that and delays described above, including from Force Majeure Events, did not

result from Seller's actions or failure to take commercially reasonable actions.

4. **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 [redacted] after the Commercial Operation Date to install additional capacity 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 [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, multiplied by the Buyer's Share, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Facility Energy. For each MWh of Facility Energy delivered in each Settlement Interval, Buyer shall pay Seller the difference of (A) the Contract Price, minus (B) the Day-Ahead Market Price at the Settlement Point (the "**DA LMP**") for such Settlement Interval; provided, however, that if the result of the difference of (A) minus (B) above results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice). Seller, through its Scheduling Coordinator, shall receive payment for Facility Energy from CAISO for such delivery based on the applicable Energy price, as published by CAISO. For the avoidance of doubt, Buyer is purchasing a bundled product and Seller's receipt of payment directly via CAISO settlements is for the Parties' mutual convenience.

(b) Excess Contract Year Deliveries. If, at any point in any Contract Year, the amount of Facility Energy exceeds [redacted] of the Expected Energy for such Contract Year, notwithstanding anything to the contrary in this Agreement, no payment shall be owed by Buyer for any additional Facility Energy.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, in excess of the Facility Energy ("**Excess Energy**"), then the price applicable to all such Excess Energy in such Settlement Interval shall be Zero Dollars ($0).

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Facility Energy during any Curtailment Period.

(e) Change in Tax Law. Notwithstanding any provision in this Agreement to the contrary, in the event that as a result of a Change in Tax Law, Seller or the Facility becomes eligible for or entitled to any new Tax Benefits or changes to or extensions of existing Tax Benefits, Seller and Buyer shall share such additional Tax Benefit Amount [redacted]

"**Change in Tax Law**" means (i) (A) any change in or amendment to the Code or another applicable federal income tax statute; (B) any change in, or issuance of, or promulgation of any temporary or final regulations by the U.S. Department of the Treasury that would result in any change to the interpretation of the Tax Code or existing temporary or final regulations promulgated by the U.S. Department of the Treasury; (C) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (D) any change in the interpretation of any of the authorities described in clauses (A) through (C) by a decision

of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law, and (ii) in the case of (A) through (D), such change or new or different interpretation, as applicable, occurs between the Execution Date and before the end of the Congress in session when the Commercial Operation Date occurs.

"**Tax Benefits**" means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45 or 48 of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or the operation of, construction, investments in or ownership of the Facility (including any cash payment or grant). [redacted]

[redacted]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility for the delivery of Facility Energy to the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the PTO and CAISO Grid, (i) Seller shall take all actions to designate the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the PTO and CAISO Grid, and (ii) Seller shall, and shall cause its designee to, take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or ensure Buyer or its designee is able to receive Guaranteed RA Amount from the Facility. On and after Initial Synchronization of the Facility to the PTO and CAISO Grid, Seller (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product in accordance with Dynamic Resource-Specific System Resource requirements, and Seller shall schedule Energy into the CAISO market consistent with the requirements for resources used to meet the CPUC's Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026), ("CPUC D.21-06-035").

(b) CAISO Costs and Revenues. Except as otherwise set forth below, Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, 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 assume all liability for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided 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 due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(d) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for the Facility.

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 Seller's progress towards achieving the Milestones, including whether Seller has met or is on target to meet the Milestones, identification of any missed Milestones, including the cause of delay, and a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.

9. List of issues that are likely to potentially 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. Prevailing wage reports as required by Law.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. 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.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

RESERVED

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

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

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

C = Price for Replacement Product for the Contract Year, in $/MWh, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the Contract Price for the Contract Year, in $/MWh

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

Buyer will send Seller Notice of the amount of damages owing, if any, and such amount shall be payable to Buyer within thirty (30) days from the date of such Notice.

As used above:

"**Adjusted Energy Production**" shall mean the sum of the following: Facility Energy + Lost Output.

"**Replacement Energy**" means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and that is scheduled as an Inter-SC Trade to Buyer and delivered to a delivery point and upon a schedule that is reasonably acceptable to Buyer.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

"**Replacement Product**" means (a) Replacement Energy and (b) Replacement Green Attributes.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*Date*] ("**Agreement**") by and between [*Name of 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. Seller has installed equipment for the Facility with a nameplate capacity of no less than eighteen (18) MW.

2. The Facility's testing included a performance test demonstrating peak electrical output of no less than eighteen (18) MW at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*Peak output in MW*].

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

4. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.

5. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications,

6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [*Name of Participating Transmission Owner as appropriate*] on [*Date*].

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [*Name of Participating Transmission Owner as appropriate*] on [*Date*].

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [*Date*].

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*Date*] ("**Agreement**") by and between [*Name of 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 the performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [*Licensed Professional Engineer*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [*Name of Seller*] ("**Seller**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*Date*] ("**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 [*Date*] (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: _____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this _____ day of _____, 20__.

[_____]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US$_____
Expiration Date: _____

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Clean Energy Alliance
1200 Carlsbad Village Dr.
Carlsbad, CA 92008
Attn: Barbara Boswell, CEO

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 Energy Alliance, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [Date of Contract / Agreement should be in the past or on the date of issuance. In case of future contract date the Letter of Credit text will be adjusted to reflect this change] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) email to [*bank email address*], or (c) facsimile to [*bank fax number*] [*optional if bank needs fax confirmation* -, confirmed by [email to [*bank email address*]] [telephone confirmation to the Issuer at [*phone number*]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in

connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its 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.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. 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.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

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 Energy Alliance, Attn: Barbara Boswell, CEO, 1200 Carlsbad Village Dr., Carlsbad, CA 92008. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

_____

[Insert officer name]
[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit 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 forty-five (45) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Clean Energy Alliance 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 Clean Energy Alliance by wire transfer in immediately available funds to the following account:

[Specify account information]

Clean Energy Alliance

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

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

Recitals

A. Buyer and [*SELLER ENTITY*], a _____ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 20___.

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

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

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

Agreement

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

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

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

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

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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

provided that, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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

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

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

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

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

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

6. **Representations and Warranties**. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [***limited liability company***][***corporate***] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the

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

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

If delivered to Buyer, to it at [____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at [____]
Attn: [____]
Fax: [____]

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

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

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

[*Signature on next page*]

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

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

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

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

Unit Information[1]

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

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

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

[ ]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

Cape Generating Station 1 LLC	**Clean Energy Alliance**
All Notices: Street: 609 Main St., 25th Floor City: Houston, TX 77002 Attn: Dawn Owens, Head of Development Phone: [redacted] Email: dawn@fervoenergy.com; notices@fervoenergy.com	**All Notices:** 1200 Carlsbad Village Dr. Carlsbad, CA 92008 Attn: Barbara Boswell, CEO Phone: (760) 209-6177 Email: ceo@thecleanenergyalliance.org
Reference Numbers: Duns: Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: Cybil Varghese, Supply Chain Phone: [redacted] Email: accountspayable@fervoenergy.com	**Invoices:** Attn: Andy Stern, Interim Treasurer Phone: (760) 209-6177 Email: Treasurer@thecleanenergyalliance.org
Scheduling: Attn: Dawn Owens, Head of Development Phone: [redacted] Email: dawn@fervoenergy.com	**Scheduling:** Attn: Jaclyn Harr, The Energy Authority Phone: (408) 306-0432 Email: jharr@teainc.org
Confirmations: Attn: Dawn Owens, Head of Development Phone: [redacted] Email: dawn@fervoenergy.com	**Confirmations:** Attn: Barbara Boswell, CEO Phone: (760) 209-6177 Email: ceo@thecleanenergyalliance.org
Payments: Attn: David Ulrey, CFO Phone: [redacted] Email: david.ulrey@fervoenergy.com	**Payments:** Attn: Andy Stern, Interim Treasurer Phone: (760) 209-6177 Email: Treasurer@thecleanenergyalliance.org
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]
With additional Notices of an Event of Default to: Attn: Legal Notices Street: 1999 Harrison Street, Suite 1800 City: Oakland, CA 94612 Email: notices@fervoenergy.com	**With additional Notices of an Event of Default to:** Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

Cape Generating Station 1 LLC	**Clean Energy Alliance**
Emergency Contact: Attn: Dawn Owens, Head of Development [redacted] Email: dawn@fervoenergy.com	**Emergency Contact:** Attn: Phone: Email:

EXHIBIT O

OPERATING RESTRICTIONS

- Nameplate capacity of the Facility: [redacted]
- Pmin [redacted]
- Ramp rate: [redacted]

EXHIBIT P

METERING DIAGRAM

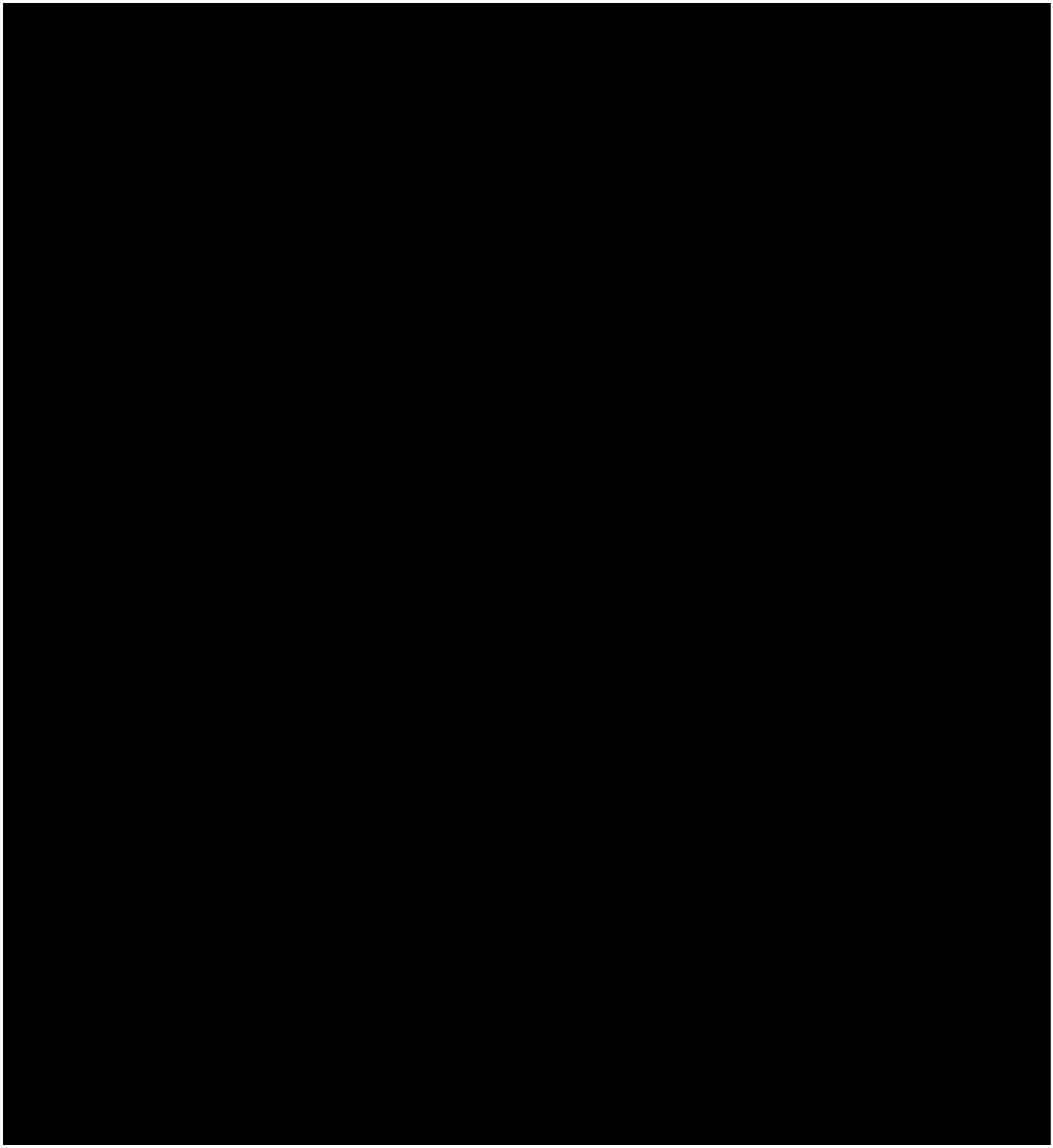

EXHIBIT Q

RESERVED

EXHIBIT R

RESERVED

EXHIBIT S

RESERVED

EXHIBIT T

FORM OF HOURLY METER AND E-TAG RECONCILIATION REPORT

Annual Hourly Comparison for PCC 1 Claims Scheduled into a California Balancing Authority								
Date	Hour Ending	E-Tag ID Number	Hourly Final Schedule (MWh)	Hourly Meter Data (MWh)	Percent Share of Final Schedule (%)	Percent Share of Facility Generation Output (%)	RPS Contract ID	Preliminary Estimate of Eligible PCC 1 Volume (MWh)