**TERM SHEET**

**BUILD-TRANSFER AGREEMENT**

THIS NON-BINDING SUMMARY OF PRINCIPAL TERMS AND CONDITIONS (THIS “TERM SHEET”) IS INTENDED AS A SUMMARY FOR DISCUSSION PURPOSES ONLY OF THE MATERIAL TERMS OF THE PROPOSED BUILD-TRANSFER AGREEMENT FOR DEVELOPMENT OF A [SOLAR PLUS STORAGE][STANDALONE STORAGE] PROJECT. THIS TERM SHEET DOES NOT REFERENCE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, COVENANTS, AND OTHER PROVISIONS THAT WOULD BE CONTAINED IN THE DEFINITIVE DOCUMENTATION FOR THE TRANSACTIONS CONTEMPLATED BY THIS TERM SHEET (THE “AGREEMENT”). FOR THE AVOIDANCE OF DOUBT, THIS TERM SHEET DOES NOT CONSTITUTE AND WILL NOT GIVE RISE TO ANY LEGALLY BINDING OBLIGATION. ANY SUCH BINDING COMMITMENT IS CONTINGENT ON, AND WILL ARISE ONLY UPON, EXECUTION BY THE PARTIES OF THE AGREEMENT.

|  | **Topic** | **Terms and Conditions** |
| --- | --- | --- |
|  | Parties | California Community Power, a joint powers authority organized and existing under the laws of the State of California, (“CCP”).[\_\_\_\_\_\_\_\_], as the developer (“Developer,” and together with CCP, each a “Party,” and collectively the “Parties”). |
|  | Project, Facility, and Facility Site | The [solar plus storage][standalone storage] project described in Developer’s bid and to be developed pursuant to the Agreement (the “Project”).“Facility” means the complete and integrated electric generator or storage facility, at the location to be described in Exhibit D-1A (*Facility Site Map*) to the Agreement and laid out as to be described in Exhibit D-1B (*Facility Layout*) to the Agreement, to be located on the Facility Site and to be designed, procured, constructed, tested, and commissioned under the Agreement, including all structures, facilities, appliances, lines, conductors, instruments, equipment, apparatus, components, roads, and other property constituting and integrating the entire facility described generally in Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement.“Facility Layout” means the site plan for the Facility, as further described in Exhibit D-1B (*Facility Layout*) to the Agreement, as provided by Developer and approved by CCP.“Facility Site” means all those parcels of land on which the Project will be located, as depicted and described in Exhibit D-1A (*Facility Site Map*) to the Agreement.“Work” means all design and engineering, procurement, permitting, construction, commissioning, supervision, environmental site assessment work, interconnection, and other services relating to the Project, including: (a) procurement and effective assignment of all real property rights relating to the Facility Site, and equipment and materials as set forth in the Agreement; (b) the post-closing work; and (c) to the extent not expressly covered by in Exhibit A-1 (*Technical Specification*) or other components of the Agreement, in accordance with Prudent Utility Practices that are necessary to provide a complete, fully functional, and operational Project in accordance with the requirements of the Agreement. |
|  | Effective Date and Notice to Proceed | The Agreement shall become effective on the first business day after each and all of the following have occurred (such day, the "Effective Date"):* each of the Parties has executed the Agreement;
* each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a [Buyer Liability Pass Through Agreement and the Project Participation Share Agreement][[1]](#footnote-2); and
* CCP has delivered to Developer Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by CCP.

Developer shall commence its performance of the Pre-NTP Work under, and in accordance with the terms of, the Agreement upon the fulfillment of each of the following conditions precedent (such date, the “Commencement Date”):* the Effective Date shall have occurred;
* Developer shall have delivered evidence to CCP that Developer has secured site control with respect to the Facility Site and the real property on which the Project’s generation tie-line will be located;
* Developer shall have delivered the Final Pro Forma Title Policy and Survey;
* Developer shall have delivered the Phase I Environmental Site Assessment that includes no recognized environmental conditions;
* Developer shall have provided to CCP the project schedule; and
* Developer shall have provided to CCP the health, safety and security procedures, rules and regulations at the Facility Site.

“Pre-NTP Work” means any Work that is necessary for Developer to ensure that the conditions precedent to the NTP Date are satisfied; provided that such Work shall not include any construction or other ground disturbing activities on the Facility Site or the procurement of any equipment or materials.Developer shall commence its performance of all Work other than the Pre-NTP Work under, and in accordance with the terms of, the Agreement upon the later to occur of: (a) the issuance by CCP of a Notice to Proceed, which CCP may issue at any time in its sole discretion; and (b) the fulfillment of each of the following conditions precedent (such later date, the “NTP Date”):* CCP shall have determined, in a manner satisfactory to CCP in its sole discretion, that it has or will be able to obtain any necessary financing for its performance under the Agreement;
* Developer shall have delivered evidence to CCP that Developer has secured construction financing for the Project;
* Developer shall have obtained all Major Permits without any terms or conditions which are unacceptable to CCP;
* Developer shall have submitted to CCP any submittals required prior to commencement of the Work;
* Developer shall have provided to CCP: (i) the final drafts of the Interconnection Agreements, to be executed on or before the NTP Date, in a form satisfying the requirements of the Agreement; and (ii) documentation of the designation of full capacity deliverability status for the Project;
* any termination right in respect of excess Network Upgrade Costs shall have expired;
* Developer shall have provided to CCP the final drafts of the EPC Contract and, if applicable, equipment supply agreement(s), to be executed on or before the NTP Date, in a form satisfying the requirements of the Agreement; and
* Developer shall have delivered to CCP the technology consultant's report, in form and substance satisfactory to CCP, which shall be addressed to CCP or accompanied by a customary reliance letter in favor of CCP.

“EPC Contract” means the engineering, procurement, and construction contract to be entered into by Developer with respect to the construction of the Project.“Project Participant” means each of the community choice aggregators that: (a) is a member of CCP; and (b) agrees to purchase products from the Facility pursuant to a Project Participation Share Agreement. |
|  | Scope of Work; Performance of Work; Performance Level Guarantee | Developer shall: (a) procure, design, install, construct, start-up, commission and test the components of the Project (including, for the avoidance of doubt, the provision of all spare parts required to operate and maintain the Project in accordance with Prudent Utility Practices for a period of [ □ ] years); (b) manage the Project’s participation in the applicable generator interconnection process; (c) obtain Full Capacity Deliverability Status interconnection rights for the Project by executing the Interconnection Agreements on or before the NTP Date; (d) obtain all permits required to perform such work; (e) obtain all other permits, real property rights, contracts, and other project assets to the extent not already owned by Developer; and (f) transfer the Project to CCP on the Project Transfer Date.“Interconnection Agreements” means that certain permanent interconnection agreement that governs the interconnection of the Facility and permits delivery of the full output of the Facility to the transmission system of the Transmission Owner and any related facility construction agreements.“Commercial Operation” means the Facility’s regular operation as an integrated whole, including the generation, delivery, charging, storage, and discharging, as applicable, of the full electrical energy capacity of the Facility to the point of interconnection consistent with Prudent Utility Practices and in accordance with the requirements of Exhibit A-1 (*Technical Specification*) and the other provisions of the Agreement.“Commercial Operation Date” means the date on which Commercial Operation is achieved.Developer shall be responsible for: (a) registering the facility with NERC; (b) registering the Facility with WREGIS; (c) obtaining CEC Pre-Certification for the Facility; and (d) registering the Facility with CAISO, including execution of all required agreements.Developer shall submit all permits, reports, applications, approval, rejection, registrations, confirmations, contracts, receipts, and other documents that Developer receives in connection with the Project to CCP within ten (10) business days, unless otherwise required in accordance with the Agreement.Developer shall: (a) achieve Substantial Completion on or before the Guaranteed Substantial Completion Date; (b) provide CCP with the Project on the Project Transfer Date; and (c) achieve Final Completion on or before the Guaranteed Final Completion Date, in each case at no cost or expense to CCP other than indirectly through CCP’s payment of the Contract Price.Developer guarantees that the Project will meet or exceed the Performance Guarantees to be further described in Exhibit U. Failure to meet such Performance Guarantees on the Substantial Completion date will result in a reduction in the Contract Price payable by CCP. |
|  | Standard of Performance | Developer shall perform, or cause to be performed, the Work in accordance with:(a) the specific standards set forth in the Agreement, including Exhibit A-1 (*Technical Specification*), Exhibit A-2 (*Scope of Work*), Exhibit T (*Guaranteed Design Conditions*) to the Agreement; (b) applicable permits; (c) applicable law; (d) the Interconnection Agreements;(e) the requirements of any lease(s), site control agreement(s), or other Facility Site agreement(s);(f) Prudent Utility Practices; and(g) the other requirements of the Agreement. |
|  | CCP Participation; Assistance to CCP | CCP, through its employees, agents, equity partners, and representatives, shall have the right to attend any meeting with representatives of a Governmental Authority regarding the Project, including in connection with interconnection rights and any conditional use permits. Developer shall assist with CCP’s participation by providing reasonable advance notice of any such meeting to CCP and facilitating CCP’s attendance and participation in such meetings.“Governmental Authority” means any federal, state, or local government legislative body, agency, board, commission, officer, official, or other entity exercising legislative, judicial, regulatory, or administrative power including the CAISO, and having jurisdiction over the performance of the Work, the Facility or its operations (including the transmission of electricity from the Facility), or the Facility Site, including health, safety, or environmental conditions of the same. For the avoidance of doubt, Governmental Authority includes, but is not limited to, CAISO, FERC, and NERC. CCP, through its employees, agents, and representatives: (a) shall have the right to attend any meeting that includes the Developer and the owners of the land comprising the Facility Site or any other counterparty to any site control agreement, or their agents, regarding the Project; and (b) shall be provided advanced notice by Developer of any such meeting, and Developer shall facilitate CCP’s attendance and participation in any such meetings.Developer shall: (a) assist CCP in dealing with any Governmental Authority in matters relating to the Work and the Project; (b) deliver all notices to CCP as and when required under the Agreement; (c) make available to CCP all such due diligence materials as CCP may reasonably request and all documents Developer is required to deliver to CCP pursuant to the Agreement; (d) permit CCP access to the Facility Site during normal business hours and at such other times as Developer may be present at the Facility Site; and (e) permit CCP and its advisors access to the Project and Project Manager and, subject to confidentiality obligations, all relevant documents and other information and data in Developer’s possession, or reasonably available to Developer. |
|  | Review and Approval of Design Documents and Permit Applications | Developer shall submit all Design Documents to CCP for review and approval. Developer shall also submit all applications for Major Permits to CCP for review and approval prior to submitting such application to any relevant authority. CCP shall respond to such submissions with its determination as to the sufficiency of such Design Documents and applications within ten (10) business days following receipt of such Design Document by CCP; provided that if CCP is actively engaged in reviewing such submission, then CCP may, before the expiration of the foregoing ten (10) business day period, exercise an option to extend the review period and any such extension beyond the initial ten (10) business day review period shall be deemed a CCP Caused Delay. If CCP determines that the content of such submission is not satisfactory, CCP shall provide a written explanation of any comment and the basis for any objection. If CCP fails to provide Developer any comments or objections to such submission within the initial ten (10) business day period, then: (a) in the case of any submission that is not a CCP Approval Required Document, such submission shall be deemed approved; and (b) in the case of any submission that is a CCP Approval Required Document, such failure shall be deemed a CCP Caused Delay, but such submission shall not be deemed approved and shall be the subject of continued CCP review.“CCP Approval Required Document” means any of the following: [(a) Major Permit applications and approvals; (b) Interconnection Agreements; and (c) initial drafts of or major updates to Design Documents.]“CCP Caused Delay” means an actual and demonstrable delay in performance of the critical path schedule for completion of the Work to the extent such delay is actually and demonstrably caused by an unexcused failure by CCP to perform its obligations under the Agreement that occurs at a time when Developer is, and continues to be, willing to perform the portion of the Work affected by such delay; provided that “CCP Caused Delay” shall not include: (a) any act or omission reasonably taken by or on behalf of CCP that is permitted by or required under the Agreement; (b) any act or omission of CCP reasonably taken pursuant to and in compliance with the direction of Developer; (c) any delay to the extent caused by Developer or any subcontractor; (d) any delay to the extent caused by a Force Majeure Event; or (e) any other delay in CCP’s performance of, or failure by CCP to perform, any of CCP’s obligations under the Agreement, to the extent caused by a failure of Developer to timely perform any of its obligations under the Agreement.“Design Documents” means design documents and other related design information (including all environmental and compliance-related documentation, such as draft environmental reports, wildlife studies, and technology or resource assessments provided in support of the Facility Layout) and results of any supporting design or other calculations, all as set forth on ‎Exhibit A-1, ‎Exhibit A-2, ‎Exhibit T and ‎Exhibit CC to the Agreement.“Major Permit” means any applicable permit that, upon issuance, may include one or more terms or conditions that will remain operative after Substantial Completion. |
|  | Environmental Site Assessment | On or prior to the date on which Developer commences the Work, Developer shall provide to CCP a Phase I ESA: (a) indicating that no environmental conditions or recognized environmental conditions exist with respect to the Facility Site; and (b) including an activity and use limitations search report. If such Phase I ESA indicates that recognized environmental conditions do exist with respect to the Facility Site, then Developer shall provide a Phase I and Phase II ESA report in form and substance satisfactory to CCP. |
|  | Tax Credit Matters; Labor and Personnel | Developer agrees that it will take no action or fail to take any action to impair CCP’s ability to obtain the ITC at the Required ITC Rate or the PTC at the Required PTC Rate during the period in which ITCs or PTCs, as applicable, may be claimed with respect to the Project. Developer shall satisfy (or cause to be satisfied) all prevailing wage and apprenticeship requirements set forth in Code Sections 45(b)(7) and 45(b)(8), or Sections 48(a)(10) and 48(a)(11), as applicable (subject to any PWA Guidance) (the “PWA Requirements”). The Parties further acknowledge that CCP intends for the Project to meet the domestic content requirements of Code Sections 45(b)(9) or 48(a)(12), as applicable (subject to any Domestic Content Guidance) (the “Domestic Content Requirements”, and together with the PWA Requirements, the “Tax Credit Requirements”). Developer shall provide all labor and personnel required to timely perform the Work.“Domestic Content Guidance” means: (a) IRS Notice 2023-38, 2023-22 IRB 872; and (b) any further guidance issued by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service), the U.S. Department of Labor, or any other Governmental Authority, pursuant to Code Section 45(b)(9), Code Section 48(a)(12), or any provision of the Code or other applicable law that is cross-referenced therein.“PWA Guidance” means IRS Notice 2022-61 (November 29, 2022), Proposed Regulations Section 1.45-7, 1.45-8, 1.45-12, and 1.48-13, and any further guidance issued by the Secretary of the U.S. Department of the Treasury (including any guidance issued by the Internal Revenue Service) pursuant to Code Section 45(b)(7) and (8) (or any corresponding provision of Section 48(a)(10) or (11)), or any provision of the Code that is cross-referenced therein.“Required ITC Rate” means the level of ITCs for which the Project is required to qualify under the Agreement. The Required ITC Rate shall include ITCs which the Project qualifies for by virtue of compliance with both the PWA Requirements and the Domestic Content Requirements.“Required PTC Rate” means the level of PTCs for which the Project is required to qualify under the Agreement. The Required PTC Rate shall include PTC which the Project qualifies for by virtue of compliance with both the PWA Requirements and the Domestic Content Requirements.“Code” means the Internal Revenue Code of 1986, as amended.Developer shall comply with any prevailing wage and similar requirements that are imposed on the Work by any Governmental Authority. If Developer included the use of union labor in the bid accepted by CCP, then Developer shall utilize union labor for on-site construction Work and provide documentation reasonably acceptable to CCP demonstrating compliance with this obligation prior to start of on-site construction. CCP highly encourages the use of union labor.The development of the Facility is a public work as defined by California Labor Code Section 1720, any construction work contracted by Developer in furtherance of the Agreement shall comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time. If Developer included the use of a Project Labor Agreement in the bid accepted by CCP, then any construction work contracted by Developer in furtherance of the Agreement shall be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations (“Project Labor Agreement”). CCP highly encourages the use of a Project Labor Agreement. |
|  | Responsibilities of CCP | CCP shall reasonably cooperate with, and shall not unreasonably interfere in contravention of the Agreement with, Developer, its agents, its employees and its subcontractors in constructing, developing and financing the Project.On and following the date on which Final Completion is achieved, CCP shall assume responsibility for and control over the day-to-day operation and maintenance of the Facility; provided that CCP would like to explore having Developer provide O&M services for the first [5 to 10] years after the Final Completion Date under a separate agreement, in which case responsibility for day-to-day operation and maintenance of the Facility would transfer from Developer to the O&M provider, rather than to CCP, on the date on which Final Completion is achieved.CCP shall designate, by written notice to Developer, a CCP Representative who shall be authorized to act on behalf of CCP, with whom Developer may consult at all reasonable times, and whose written instructions, requests, and decisions will be binding upon CCP.CCP shall cause its personnel, agents, and visitors present on the Facility Site to observe and comply with all reasonable health, safety, security, and environmental regulations established by Developer or the EPC Contractor for the Facility Site and provided to CCP.Except as otherwise described herein, CCP alone shall at all times be (or be responsible for contracting) the scheduling coordinator for the Project. |
| 1.
 | Contract Price | In consideration for the performance of the Work and the transfer of the Project to CCP, CCP agrees to pay Developer an amount equal to the Contract Price (as set forth in the Developer’s bid).The Contract Price shall be paid by CCP to Developer in increments as follows:* an amount equal to: (a) [ □ ]% of the Contract Price; *less* (b) the sum of: (i) the Punch List Holdback Amount; and (ii) an amount equal to 2.5% of the Contract Price (the "Cash Retention") (such amount, the “Transfer Payment”), which shall be due and payable on the Project Transfer Date; provided that Developer shall give CCP: (x) ninety (90) days’ prior written notice of the anticipated Project Transfer Date; and (y) twenty (20) business days’ prior written notice of the actual Project Transfer Date; and
* an amount equal to the Contract Price, less the Transfer Payment (such amount, the “Second Payment”), which shall be due and payable upon Final Completion.
 |
|  | Taxes, Duties, and Tariffs | Developer will obtain a valid California sales Tax permit by no later than sixty (60) days after the Effective Date. Any sales or use Tax liability, including related penalties and interest assessed to either Party, shall be the sole responsibility of Developer.Unless otherwise provided in the Agreement, prior to the Project Transfer Date, Developer shall pay all sales and use Taxes on all materials used in performing the Work performed prior to the Project Transfer Date.Except as set forth below, Developer shall pay all import or export duties, tariffs, levies, imposts, and other Taxes imposed by a Governmental Authority outside of the United States in connection with the exportation of any item of equipment and materials from the jurisdiction of such Governmental Authority, and all import duties, tariffs, imposts, and other Taxes imposed by the United States in connection with the importation of an item of equipment and materials into the United States.Contract Price Import Tariff Adjustment.As of the Effective Date, the Contract Price is based on an assumption that the cost of the Import Tariffs applicable to the battery cells to be used to construct the Facility (“**Facility Equipment**”) will be [\_\_\_\_\_\_] dollars ($[\_\_\_\_\_\_]) (“**Benchmark Tariff Cost**”), based upon an assumed XX percent (XX%) import tariff rate applicable to the Facility (“**Benchmark Tariff Rate**”). If the actual Import Tariff rate applicable to the Facility as of the date such Facility Equipment clears customs through the United States Bureau of Customs and Border Protection (“**Final Tariff Rate**”) is higher or lower than the Benchmark Tariff Rate, then the Contract Price shall be increased or decreased, as applicable, by $[\_\_]/kW-mo. for each $100,000 the actual cost of the Import Tariffs applicable to the Facility Equipment (“**Final Tariff Cost**”) differs from the Benchmark Tariff Cost; provided, Buyer shall have the right, in its sole discretion, to reject any Contract Price increase in excess of $[\_\_]/kW-mo. (the “**Tariff Increase Cap**”). Seller shall provide to Buyer, at Seller’s sole expense, written certification from an independent evaluator reasonably acceptable to Buyer of the Final Tariff Costs (or, if there is no change in the Final Tariff Rate, certifying to Buyer that the Benchmark Tariff Rate and Final Tariff Rate are equal). If Buyer rejects any Contract Price increase in excess of the Tariff Increase Cap, Seller shall have the right to terminate this Agreement by providing Notice to Buyer of such early termination, and Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement, and neither Party shall have any further obligations or liability to the other except those which survive termination, including Section 11.6.“Import Tariff” means the tariffs or duties applicable to the importation of the Facility Equipment, as applicable, into the United States, but excluding any tariffs that are specific to the original equipment manufacturer.Developer shall pay all real property and personal property taxes assessed with respect to the Project assets, the Facility Site and the Facility for the period prior to and including the Project Transfer Date, and CCP shall pay all real property and personal property Taxes assessed with respect to the Project assets, the Facility Site and the Facility for the period after the Project Transfer Date.“Tax” or “Taxes” means any and all federal, state, local or foreign income, gross receipts, franchise, estimated, alternative, minimum, add on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, escheat, capital stock, intangibles, social security, unemployment, disability, payroll, license, withholding, employee or other tax or levy or similar charge imposed by any Governmental Authority, together with any interest, fine, penalties, or additions to tax in respect of the foregoing. |
|  | Required Credit Support | Developer shall deliver to CCP, on or prior to the Effective Date, and shall maintain thereafter in connection with the Agreement, credit support (“Required Credit Support”) in the form of either: (a) a letter of credit in the amount of the Required Credit Support Amount; or (b) cash (denominated in United States dollars) in the amount of the Required Credit Support Amount deposited into a deposit account maintained with an Approved Deposit Bank, with a security interest granted to CCP and perfected with a Deposit Account Control Agreement.“Approved Deposit Bank” means 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 (i) A- with an outlook designation of “stable” from S&P or (ii) A3 with an outlook designation of “stable” from Moody’s; or (b) being reasonably acceptable to Buyer.“Deposit Account Control Agreement” means a deposit account control agreement in form and substance reasonably satisfactory to CCP.“Required Credit Support Amount” means [$150,000 per MW of Project’s expected solar nameplate capacity (as set forth in Developer’s bid) and $37,500 per MWh of Project’s expected installed storage nameplate energy capacity (as set forth in Developer’s bid)].The Required Credit Support shall permit CCP to make a demand: (a) for any payment obligation which Developer has failed to pay prior to the end of any applicable grace or cure periods provided for such obligation; (b) for any damages, including liquidated damages, owed from Developer to CCP; (c) in the case of a letter of credit, in the event that any letter of credit is: (i) scheduled to expire within thirty (30) days or less and has not been replaced or extended by Developer (if there is an ongoing obligation for Developer to maintain the Required Credit Support); or (ii) required to be replaced pursuant to the Agreement and has not been replaced or extended by Developer within the timeframe set forth in such Section; and (d) in the case of cash deposited in a deposit account, in the event that the deposit account is required to be replaced pursuant to the Agreement and such deposit account has not been replaced by Developer within the timeframe set forth in such Section. |
|  | Mechanical Completion | Developer shall achieve Mechanical Completion. “Mechanical Completion” shall occur when all of the following requirements are met:* all equipment and materials for the Project have been installed and are mechanically complete in accordance with the Exhibit A-1 (*Technical Specification*) to the Agreement, the EPC Contract, each equipment supply agreement, the quality assurance plan and the other requirements of the Agreement;
* CCP has participated in the Mechanical Completion certificate walk-down;
* all equipment and systems have been cleaned as necessary and have been installed in a manner that does not: (a) void any subcontractor or vendor equipment, system, or other warranties; or (b) violate any applicable law, Prudent Utility Practice, or applicable permit;
* all systems required that: (a) are to be installed by the EPC Contractor, the Equipment Supplier, or any other contractor, and (b) are necessary for operation of the Project are ready to commence commissioning and the Performance Tests;
* "Mechanical Completion" (or the equivalent) shall have occurred under the EPC Contract and, if applicable, each equipment supply agreement, and all certificates of mechanical completion have been issued by: (a) the EPC Contractor under the EPC Contract; and (b) if applicable, the Equipment Supplier under each equipment supply agreement, and in each case, accepted by Developer; and submitted by Developer to CCP and accepted by CCP; and
* CCP has accepted a mechanical completion certificate.
 |
|  | Project Transfer Date | Developer shall give CCP: (x) ninety (90) days’ prior written notice of the anticipated Project Transfer Date; and (y) twenty (20) business days’ prior written notice of the business day on which the Project Transfer shall take place (such business day, the “Project Transfer Date”). “Project Transfer” means the transfer of the Project from Developer to CCP in accordance with the Agreement, which shall not occur until all of the following conditions have been satisfied or waived by CCP:1. Project Requirements:
2. Mechanical Completion shall have occurred, and any defects and deficiencies identified on or prior to the Project Transfer have been repaired or remedied, as applicable (other than any immaterial defects or deficiencies that Developer commits to repair or remedy prior to the Substantial Completion date);
3. the Facility has obtained CEC Pre-Certification;
4. the Facility has attained full capacity deliverability status under its Interconnection Agreements, all Network Upgrades have been constructed or are in service, and Developer is entitled to deliver to the point of interconnection the Facility's full electrical energy output (based on the design capacity);
5. neither commissioning nor any Performance Test shall have commenced;
6. the functional test shall not have commenced;
7. Project interconnection testing shall not have commenced, and no portion of the Project shall have been energized or shall have received any backfeed power;
8. the Project shall not have been synchronized with the transmission system of the Transmission Owner; and
9. the Project shall not have produced meterable quantities of electricity or commenced delivery of electric output to the transmission system of the Transmission Owner in commercial quantities on a sustained and reliable basis.
10. Developer shall have performed or complied in all material respects with all covenants, agreements and conditions contained in the Agreement on its respective part that are required to be performed or complied with at or prior to the Project Transfer;
11. All Major Permits shall have been obtained without any terms or conditions unacceptable to CCP and all Permit conditions that are required to be satisfied prior to the Project Transfer Date in accordance with the Agreement have been timely satisfied;
12. Representations and Warranties:
13. each of Developer’s representations with respect to due organization, lack of breach, corporate action and powers, brokers and finders, ownership, and taxes (collectively, the “Fundamental Representations”) is true and correct in all material respects as of the Project Transfer Date;
14. each of Developer’s representations with respect to lack of violation of law and litigation, applicable permits, real property, project contracts and assigned contracts, consents, environmental Claims, intellectual property, zoning, project condition, utilities, project financing, QF or EWG status, credit support, project assets, and title commitment and survey is true and correct in all respects as of the Project Transfer Date; and
15. Developer shall have delivered (or concurrently with the Project Transfer, shall deliver) all of the documents and other deliverables required to be delivered by it.
16. The obligation of Developer to consummate the Project Transfer is subject to the satisfaction or waiver by Developer of each of the following conditions precedent:
17. CCP shall have performed or complied in all material respects with all covenants, agreements, and conditions contained in the Agreement on its respective part required to be performed or complied with at or prior to the Project Transfer;
18. each Fundamental Representation of CCP is true and correct in all material respects, and each representation and warranty set forth in Section 20.2 of the Agreement (other than the Fundamental Representations) is true and correct in all respects as of the Project Transfer Date; and
19. CCP shall have delivered (or concurrently with the Project Transfer, shall deliver) all of the documents and other deliverables required to be delivered by it, if any.
20. As a condition to the Project Transfer Date, Developer shall deliver to CCP on or before the Project Transfer Date the following documents and other deliverables, each in form and substance satisfactory to CCP:
21. an instrument of assignment, duly executed by Developer, assigning to CCP all of its right, title, and interest in, to, and under the Facility Site agreements;
22. Warranty Deed(s), or other instruments of assignment, transferring to CCP fee ownership of, or, if and to the extent elected by CCP, other usage and occupancy rights with respect to, the parcel on which the substation is located, and all of Developer’s right, title, and interest in parcels in the Facility Site held in fee by Developer;
23. an assignment of each project contract in effect on the Project Transfer Date that: (a) is necessary for the ownership, interconnection, operation, or maintenance of the Project after the Project Transfer Date (including to achieve Final Completion), excluding written instruments creating real property rights; or (b) is identified by CCP prior to the Project Transfer Date (the “Assigned Contracts”) and that is not already assigned to CCP pursuant to the Assignment (Facility Site Agreements) to be set forth in Exhibit D-5 to the Agreement, which assignment document shall attach true, correct, full, and final copies of each such Assigned Contract;
24. an assignment of the warranties of the EPC Contractor, Equipment Supplier and any other third-party warranties if not assigned in the Assignment (Assigned Contracts);
25. a Real Estate Transfer Tax Valuation Affidavit;
26. an assignment of all applicable permits required for CCP to maintain and operate the Facility and the Facility Site (if any), which assignment shall attach true, correct, full, and final copies of each such applicable permit;
27. a bill of sale for the Project and associated documentation;
28. a title policy and a survey signed by surveyor reflecting those as-built Project improvements constructed as of the Project Transfer Date;
29. a duly executed certificate of non-foreign status;
30. a full unconditional lien waiver from each Major Subcontractor to whom final payment has been made;
31. a full conditional lien waiver from each Major Subcontractor to whom final payment will be made out of the proceeds of the Transfer Payment;
32. a partial unconditional lien waiver from Developer and each Major Subcontractor to whom partial payment has been made;
33. a partial conditional lien waiver from Developer and each Major Subcontractor to whom partial payment will be made out of the proceeds of the Transfer Payment;
34. an instrument evidencing the release of any security interests held by any third parties with respect to the Project, including if applicable, a copy of an executed payoff letter in respect of any financing arrangements and a release in full in respect of all security interests (including financing liens) held by any financing parties or any other third parties with respect to the Project, including UCC-3 termination statements and releases of deeds of trust, the forms of which release documents shall be satisfactory to CCP in its sole discretion;
35. true, correct and complete copies of such books, records, Tax returns and other documents in connection with the Project pertaining to the period prior to the Project Transfer Date as may be reasonably necessary for CCP to own, operate, and maintain the Facility;
36. lien search results, dated within fifteen (15) days prior to the Project Transfer Date, in all relevant jurisdictions (as reasonably determined by CCP), showing that no liens other than permitted encumbrances exist on the Facility, the Facility Site, the Project or the Project assets as of such date;
37. (a) the Tax Credit Certificate, and (b) a final draft of the Placed in Service Certificate, which Developer shall execute and deliver to CCP on the Project Transfer Date;
38. any required Environmental Site Assessment;
39. each required estoppel certificate from each landowner party to a Facility Site agreement;
40. executed copies of each of the Interconnection Agreements;
41. (a) a certificate from an authorized signatory of Developer certifying as to Developer's organizational documents as then in effect; (b) a certificate as to Developer's good standing in the Developer's jurisdiction of organization; and (c) if the Developer's jurisdiction of organization is not the State of California, a certificate from the State of California as to Developer's authorization to do business and good standing in such jurisdiction;
42. (a) the independent engineer report, together with a customary reliance letter to the extent the independent engineer report is not addressed to CCP; and (b) the independent engineer substantial completion certificate, dated as of the Project Transfer Date;
43. all spare parts for maintenance and operation of the Project that have not already been transferred to CCP;
44. a bring down of the technology consultant's report to the extent the independent engineer, in the independent engineer report, recommends an update to the technology consultant report because of changes to the as-built design relative to Exhibit A-1 (*Technical Specification*) to the Agreement, addressed to CCP or accompanied by a customary reliance letter in favor of CCP; and
45. a closing statement prepared by the Title Company showing all disbursements of money to any person or entity in respect of: (a) real estate; (b) title policy premiums, fees for endorsements and recording and any other costs or expenses of the Title Company or incurred in connection with the issuance of endorsements to the Title Policy and required to be paid in connection with the Project Transfer and the issuance of the Title Policy (which Title Policy premiums, fees for endorsements, costs and expenses shall be borne by Developer); and (c) transfer or other real estate taxes, which shall in each case be a Developer cost that Developer may direct to be paid out of the Transfer Payment.
 |
|  | Substantial Completion | Developer shall achieve, or cause to be achieved, Substantial Completion by the Guaranteed Substantial Completion Date. “Substantial Completion” shall occur when the following requirements are met:* except for Punch List items, all equipment and materials associated with the Project have been properly assembled, erected, installed, adjusted, tested, and commissioned, and are mechanically, electrically, and structurally complete and sound, in each case in accordance with the requirements of the Agreement, and can be used safely and operated continuously in accordance with the Agreement, applicable law, and prudent utility practices (as defined in the Agreement);
* Mechanical Completion has occurred with respect to the Facility;
* commissioning has been successfully completed in accordance with the commissioning procedures and Prudent Utility Practices;
* the functional test has been successfully completed in accordance with the EPC Contract;
* Project interconnection testing has been completed, the electrical works necessary to achieve interconnection of the Facility to the transmission system of the Transmission Owner have been energized, and interconnection has occurred;
* (a) all Performance Tests have been completed; and (b) with respect to each Performance Guarantee, either: (i) Developer has caused the Project to meet or exceed such Performance Guarantee; as demonstrated through a successfully completed Performance Test or (ii) Developer: (A) has caused the Project to meet or exceed the Minimum Performance Level for such Performance Guarantee; as demonstrated through a successfully completed Performance Test; and (B) the Developer has paid liquidated damages in the amount required pursuant to the Agreement; provided that CCP may elect to offset the amount of such liquidated damages from the Contract Price dues and payable by CCP, in lieu of receiving such liquidated damages from Developer;
* the Facility has commenced Commercial Operation;
* Developer has delivered to CCP copies of all test reports, documents, records, drawings, and electrical schematics related to the Facility;
* a walk down of the Project, facilitated and led by Developer with CCP participation, has been performed; provided that: (a) such walk down will constitute a visual inspection, unless agreed upon otherwise; and (b) outstanding identified items will be included in the final Punch List;
* Developer has prepared and submitted to CCP, and CCP has approved, the final Punch List;
* Developer has delivered, or caused to be delivered, all lien waivers required pursuant to the Agreement;
* Developer has delivered copies of the O&M manual and SCADA manual to CCP;
* “Substantial Completion” (or the equivalent) shall have occurred pursuant to each of: (a) the EPC Contract; and (b) if applicable, each equipment supply agreement, and all certificates of substantial completion have been issued by: (x) the EPC Contractor under the EPC Contract; and (y) if applicable, the Equipment Supplier under each equipment supply agreement, and in each case, accepted by Developer and CCP; and
* CCP has accepted a substantial completion certificate.

“Guaranteed Substantial Completion Date” shall have the meaning to be set forth in the Agreement. |
|  | Final Completion | Developer shall achieve, or cause to be achieved, Final Completion by the Guaranteed Final Completion Date. “Final Completion” shall have occurred when the following requirements are met:* all supplies, personnel and waste of Developer and subcontractors have been removed from the Facility Site, and Developer has performed any actions needed to resolve outstanding obligations to landowners in connection with restoration, reclamation, and revegetation under any Facility Site agreement;
* all Punch List items have been corrected or performed to comply with the requirements of the Agreement;
* “Final Completion” has occurred under the EPC Contract (as defined under the EPC Contract);
* Developer has paid in full any Delay Liquidated Damages owed;
* CCP has received: (a) a complete set of drawings, including mechanical, civil and electrical drawings, showing the "as built" condition of the Project Improvements; and (b) an update to the survey reflecting the as-built location of the Facility Layout;
* Developer shall have delivered to CCP a full unconditional lien waiver from Developer and each subcontractor with whom Developer enters into a subcontract having an aggregate value of more than $100,000 (each a “Major Subcontractor”) other than those who furnished final lien waivers; and
* CCP has accepted a Final Completion certificate.

“Guaranteed Final Completion Date” shall have the meaning to be set forth in the Agreement. |
|  | Delay Liquidated Damages | Developer agrees that if Substantial Completion is not achieved by the Guaranteed Substantial Completion Date, then Developer shall pay as liquidated damages to CCP an amount equal to: (i) [\_\_\_\_\_\_\_\_\_] Dollars ($\_\_\_\_\_\_\_) per day for the first [\_\_\_\_\_\_] days; and (ii) [\_\_\_\_\_\_\_\_\_] Dollars ($\_\_\_\_\_\_\_) per day for each day in excess of [\_\_\_\_\_\_] days, after the Guaranteed Substantial Completion Date until Substantial Completion is achieved (the “Delay Liquidated Damages”). |
|  | Change Orders | If CCP desires to make any change in the Work, CCP and Developer shall consult concerning the estimated cost and impact on the project schedule and the Contract Price. Thereafter, CCP may request such change, and Developer shall upon receipt of such request, promptly prepare a detailed estimate of the cost of such change and its impact on the project schedule. CCP shall review Developer’s estimate, and if CCP accepts or the Parties otherwise agree as to the adjustments to be made to the Agreement, Developer shall submit a proposed Change Order setting forth such agreed adjustments, and CCP may endorse such Change Order. Thereafter, the Parties shall promptly implement the change in the Work and the adjustments to the Agreement contained in the Change Order. CCP may determine in its sole discretion not to undertake the change, in which case no Change Order shall issue.Except as expressly set forth in the Agreement, Developer shall not be entitled to any extensions of the project schedule nor any increase in the Contract Price.Developer shall be entitled to request Change Orders in the event that: (a) any CCP Caused Delay causes a delay to the critical path schedule for completion of the Work or an increase in Developer’s costs of achieving any remaining completion milestone or performing the Work; (b) one or more Force Majeure Events has an impact on the critical path schedule for completion of the Work; or (c) a change in law has an impact on the critical path schedule for completion of the Work or causes an increase in Developer’s costs of achieving any remaining completion milestone or performing the Work; provided that with respect to the foregoing clause (c), if the increase in Developer’s costs of achieving any remaining completion milestone or performing the Work as a result of any such change in law exceeds [$\_\_\_\_\_] (the “Change in Law Cost Cap”), then CCP shall have the option to either: (x) agree to adjust the Contract Price accordingly to cover such increase in costs; or (b) terminate the Agreement upon ten (10) business days’ notice to Developer. Notwithstanding anything to the contrary in the foregoing clauses (a), (b), or (c), in no event will Developer be entitled to a Change Order for an extension of the project schedule that would result in the Project not qualifying for the ITC at the Required ITC Rate or the PTC at the Required PTC Rate. |
|  | Force Majeure Events | “Force Majeure Event” means any event or circumstance, including those listed below (to the extent they meet the other requirements of this definition), that occurs subsequent to the Effective Date and before the termination of the Agreement that delays or prevents a Party’s timely performance of its obligations under the Agreement, but only to the extent that: (a) such Force Majeure Event is not attributable to fault or negligence on the part of that Party or its agents, subcontractors, or suppliers; (b) such Force Majeure Event is caused by factors beyond the reasonable control of that Party or its agents, subcontractors, or suppliers; and (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate, or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences:* acts of God, such as hurricanes, floods, lightning, earthquakes, or other weather or climatic event, which event, if applicable, is abnormally severe and not reasonably foreseeable for the period of time when, and the area where, such event occurs, based on, in the case of the Facility Site, the most recent twenty (20)-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) for the vicinity of the Project;
* sabotage or destruction by a third-party of facilities and equipment relating to the performance by the affected Party of its obligations under the Agreement;
* war, riot, acts of a public enemy or other civil disturbance;
* strike, walkout, lockout or other significant labor dispute;
* epidemic, pandemic, quarantine or outbreak of disease other than COVID-19.

None of the following shall constitute a Force Majeure Event:* economic hardship of either Party;
* with respect to any applicable law or applicable permit, the following shall not constitute a Force Majeure Event: (i) enactment, adoption, promulgation, amendment, judicial modification, or repeal of any applicable law that occurs before the Effective Date, but takes effect after the Effective Date; (ii) the general requirement of such applicable law or such applicable permit to comply with future statutes, laws, ordinances, codes, rules, regulations or final judicial orders; (iii) a change in any income tax law enacted or effective after the Effective Date; (iv) the judicial modification or repeal of local zoning ordinances or other similar applicable law; or (v) Developer's failure to obtain an applicable permit from a governmental authority, or the revocation of an applicable permit by a governmental authority, to the extent attributable to the fault or negligence of Developer;
* with respect to labor disputes and labor matters, the following shall not constitute a Force Majeure Event: (i) any labor shortage affecting Developer or any subcontractor, unless caused by a Force Majeure Event; (ii) any labor disputes involving strikes, walkouts, boycotts, or disturbances directed specifically at Developer or any subcontractor; or (iii) any labor disturbances, disputes, boycotts or strikes (whether primary or secondary in nature) involving Developer or any subcontractor taking place at a facility of Developer or any subcontractor; provided that the exception provided in the preceding clause (iii) shall not apply when any such labor disturbance, dispute, boycott or strike: (x) is a national action; or (y) extends beyond the geographic area of the State of California (for labor disputes, disturbances, boycotts or strikes taking place at the Facility) or extends beyond the geographic regional area of a facility of Developer or any subcontractors (for labor disputes, disturbances, boycotts or strikes taking place at a facility of the EPC Contractor, equipment supplier or any of their subcontractors);
* mechanical or equipment failure, unless caused by an independent Force Majeure Event;
* climatic and weather conditions, other than those particular climatic or weather conditions specifically identified above;
* any delay, default, or failure (direct or indirect) in obtaining materials or labor by Developer or any subcontractor performing any Work, or any other delay, default, or failure (financial or otherwise) of Developer or any subcontractor, unless such delay, default, or failure is itself caused by an independent Force Majeure Event;
* Developer's or any subcontractor's inability to obtain, any delay in Developer's or any subcontractor's ability to obtain, or any change in market conditions that causes a change in price of, any labor or material or equipment required to develop, construct, commission, test, own, operate, or maintain the Facility, including as a result of the imposition of any tariffs, quotas, or other trade restrictions with respect thereto;
* any Facility condition or event arising therefrom;
* any delay or failure of third parties to cooperate with Developer in the cure of title objections;
* a failure to execute the Interconnection Agreements by any counterparty required to be party thereto or a failure to assign the Interconnection Agreements to CCP as and when required under the Agreement;
* any FERC-approved amendments to CAISO's FERC-approved tariff or modules, schedules, rate schedules, or attachments thereto;
* any delays in the critical path attributable to COVID-19; or
* any forced labor impact(s).
 |
|  | Warranties | Developer represents and warrants to CCP that Developer’s and its subcontractor’s services related to the Work, including engineering and construction management services, will comply with the Project Contracts, Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement, applicable permits, applicable laws and Prudent Utility Practices, and meet the applicable standards of care and diligence normally practiced by engineering and construction firms performing services of a similar nature in existence at the time of performance of the Work or services for the electric generation industry of the United States.“Prudent Utility Practices” means those practices, methods, techniques, standards, and acts engaged in or approved by a significant portion of the electric generation and storage industries in the United States, or any of the practices, methods, techniques, standards, and acts that, in the exercise of reasonable judgment in light of the facts known (or that a qualified and prudent contractor could reasonably be expected to have known) at the time a decision is made, would have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition, in each case for use in connection with the design, engineering, supply, construction, start-up, testing, commissioning, completion, operation, or maintenance of similar equipment at energy facilities of the same or similar size and type as the Facility that, at the particular time of performance of the Work or of operation of the Facility: (a) in the exercise of that degree of skill, diligence, prudence, and foresight which would reasonably be expected from a skilled and experienced licensed engineer or contractor employing generally accepted professional standards with respect to the performance of the Work or the operation of the Facility, as the case may be, would have been expected to accomplish the desired result in a manner consistent with applicable law, applicable permits, codes and standards, reliability, safety, environmental protection, economy, and expediency; and (b) conform in all material respects to the design, engineering, construction, testing, operation, maintenance, and other recommendations and guidelines applicable to the equipment in question. Prudent Utility Practices are not the optimum practices, methods, techniques, standards and acts to the exclusion of others, but rather refer to those practices, methods, techniques, standards and acts that are generally accepted or approved by a significant portion of the regulated electric utility industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.Developer represents and warrants to CCP, and shall obtain similar representations and warranties from the appropriate subcontractors, that the Work: (a) will be constructed in a good and workmanlike manner; and (b) will conform in all material respects to the Agreement, the Project Contracts, Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement, applicable permits, sound construction practices, and all applicable laws. Developer further represents and warrants that all equipment and materials furnished by Developer, or its subcontractors: (a) will be of new manufacture and will be free from defects in design, workmanship, and materials; (b) will be in compliance with all applicable laws; (c) have been transported, handled, stored, maintained, assembled, installed, and tested according to the manufacturer’s recommendations (unless otherwise required by the Project Contracts, including Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement); (d) will have been fully tested to meet the requirements of the Project Contracts, including Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement; and (e) will perform in accordance with the Project Contracts, including Exhibit A-1 (*Technical Specification*) and Exhibit A-2 (*Scope of Work*) to the Agreement, and applicable permits. Developer further represents and warrants that such Developer-supplied equipment and materials will comply with the requirements of Exhibit A-1 (*Technical Specification*) to the Agreement.Developer shall cause the EPC Contractor and all other applicable subcontractors or suppliers to procure warranties for the equipment and materials that: (a) meet or exceed the minimum warranty requirements set forth on Exhibit B-1 (*Manufacturer’s Warranties*) to the Agreement; and (b) are otherwise reasonably satisfactory to CCP.If any portion of the Work exhibits a deficiency within two (2) years following the Substantial Completion date (the “Warranty Callback Period”), Developer shall cause such deficiency to be corrected at no additional cost to CCP (the “Warranty Obligations”), except that for any deficiency which is corrected by Developer pursuant to its Warranty Obligations more than one (1) year after the Substantial Completion date, Developer’s warranty shall be extended until the earlier of one (1) year after the date of such correction and three (3) years after the Substantial Completion date.The warranties do not cover damage, malfunctions or service failures caused by:* failure by CCP to follow in all material respects the operation or maintenance instructions set forth in the O&M Manual;
* abuse, misuse, or negligent acts or omissions by someone other than Developer or a third party contracted or approved by Developer; or
* damage or deteriorated performance of the Project caused by lightning, fire, flood, extreme weather, pest damage, accidental breakage, and actions of third parties; provided that the foregoing shall not apply when caused by any act or omission of Developer.
 |
|  | O&M Manual | Developer shall submit to CCP, not later than one hundred twenty (120) days prior to Substantial Completion (as indicated in the project schedule), the O&M Manual, the SCADA Manual, and operation and maintenance manuals for all major components, as reasonably requested by CCP, and each in form and substance reasonably acceptable to CCP. |
|  | Termination for Extended Force Majeure Event | If either Party is rendered unable to perform its obligations hereunder, in whole or in substantial part, after the Effective Date because of one or more Force Majeure Events, individually or in the aggregate, lasting for a period of one hundred eighty (180) consecutive days or more, then the unaffected Party shall have the option of terminating the Agreement, exercisable by giving ten (10) business days’ notice to the other Party. |
|  | Developer Events of Default; Termination by CCP | Developer shall be in default under the Agreement upon the occurrence of any of the following events (each, a “Developer Event of Default”):* (i) Developer does not commence the Work in accordance with the Agreement on or prior to [\_\_\_\_\_], 20[\_\_], as a result of Developer's failure to fulfill its obligations; (ii) the Project Transfer Date does not occur on or prior to [\_\_\_\_\_], 20[\_\_]; or (iii) Delay Liquidated Damages accrued by Developer (without giving effect to the Delay LD Cap) equal or exceed the Delay LD Cap;
* Developer fails to perform any provision of the Agreement such that it would not be able to deliver to CCP the Project conforming in all material respects with the requirements of the Agreement;
* (i) Developer contravenes any applicable law or applicable permit such that the ability of Developer or any subcontractor to perform the Work in accordance with the Agreement is materially hindered or the Project becomes subject to a Material Adverse Effect; or (ii) Developer fails to amend or modify any Major Permit promptly following notice by CCP that such Major Permit does not satisfy the conditions set forth in the Agreement;
* Developer becomes insolvent or bankrupt, or generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization, or bankruptcy proceedings are commenced by Developer;
* insolvency, receivership, reorganization, or bankruptcy proceedings are commenced against Developer, and such proceedings are not terminated, stayed, or dismissed within sixty (60) days after the commencement thereof;
* if any representation or warranty made by Developer in the Agreement is untrue or misleading in any material respect when made or when deemed made or repeated, and the same shall not be remedied within thirty (30) days after written notice from CCP;
* Developer’s sponsor ceases to own, directly or indirectly, at least fifty-one percent (51%) of the equity interests in Developer, or ceases to control Developer;
* an event of default (however titled or defined) of Developer under the financing arrangements has occurred and is continuing;
* in the event that Developer provides the Required Credit Support with a letter of credit, Developer breaches the requirements thereof;
* in the event that Developer provides the Required Credit Support with cash held in a deposit account, Developer breaches the requirements thereof;
* Developer fails to pay when due any amount required to be paid under the Agreement, and the same shall not be remedied within thirty (30) days after notice from CCP; or
* Developer fails to eliminate any objections raised by CCP in a title objection notice within the applicable cure period or in a pro forma objection notice within the applicable cure period or fails to deliver the Title Policy in the form of the agreed upon final pro forma title policy.

CCP shall give notice of any Developer Event of Default to Developer. The Agreement will set forth the varying cure periods applicable to certain of the foregoing events of default, the expiration of which shall give rise to a right on the part of CCP to terminate. |
|  | No Fault CCP Termination Rights | Prior to the NTP Date, CCP shall have the right to terminate the Agreement, upon ten (10) days’ written notice to Developer, if any of the following occur, regardless of whether any Developer Event of Default shall have occurred:1. the application for any Major Permits is litigated for greater than one hundred eighty [180] days or is subject to political opposition by the local municipal government or other applicable Governmental Authority;
2. litigation pertaining to the Project is brought under CEQA by or against CCP, Developer, or any Project Participant and such litigation persists for more than one hundred eighty [180] days;
3. costs borne by CCP, if any, in connection with litigation relating to or arising from the Project or the Work exceed [$\_\_\_\_\_] (the “CCP Litigation Cost Cap”);
4. costs borne by CCP, if any, in connection with permitting or governmental approvals relating to or arising from the Project or the Work exceed [$\_\_\_\_\_] (the “CCP Permitting Cost Cap”); or
5. CCP determines, in its sole but reasonable discretion, that the Project is no longer beneficial to the Project Participants due to public relations or political concerns pertaining to the community in or around which the Project is located.
 |
|  | Consequences of Termination by CCP | If CCP terminates the Agreement prior to the NTP Date for any reason other than a Developer Event of Default, then the following shall apply:1. CCP shall be relieved of any further obligation under the Agreement, including the obligation to accept the transfer of the Project and to pay the Contract Price, except for those provisions that expressly survive termination as set forth in the Agreement; and
2. CCP shall remove its personnel and any personal property belonging to CCP or its personnel from the Facility Site (or other location where the field construction office for the Project may be located) and shall refrain and cause its personnel to refrain from taking from the Facility Site or the field construction office any documents constituting confidential information of Developer or its affiliates or of any subcontractors;

If CCP terminates the Agreement prior to the Project Transfer Date due to any Developer Events of Default, then the following shall apply:1. CCP shall be relieved of any further obligation under the Agreement, including the obligation to accept the transfer of the Project and to pay the Contract Price, except for those provisions that expressly survive termination as set forth in the Agreement;
2. CCP shall remove its personnel and any personal property belonging to CCP or its personnel from the Facility Site (or other location where the field construction office for the Project may be located) and shall refrain and cause its personnel to refrain from taking from the Facility Site or the field construction office any documents constituting confidential information of Developer or its affiliates or of any subcontractors;
3. CCP shall have a right of first offer with respect to any sale of the interconnection queue position or the site control agreements or other real property rights, in each case with respect to the Facility, by Developer or any of Developer’s affiliates; and
4. Developer shall pay to CCP a termination fee equal to 100% of the Required Credit Support Amount.

Upon termination by CCP on or after the Project Transfer Date, CCP shall retain all right, title and interest to the Work, the Project and the Project assets, and the following provisions shall apply:1. Subject to the proviso set forth in clause (e) below, CCP shall be relieved of any further obligation under the Agreement, except for those provisions that expressly survive termination as set forth in the Agreement;
2. Developer shall: (i) cease operations as directed by CCP in its termination notice; (ii) take action necessary, or that CCP may reasonably direct, for the protection and preservation of the Work; and (iii) except for Work directed to be performed prior to the effective date of termination stated in CCP's termination notice, or except as expressly requested by CCP or pursuant to clause (c) below, terminate all existing subcontracts and purchase orders that are terminable without premium, penalty or termination charges and enter into no further subcontracts and purchase orders with respect to the Work or the Project;
3. CCP shall pay to Developer all amounts payable by CCP in respect of punch list items, post-construction certifications and vegetation obligations completed prior to the termination date;
4. Developer shall deliver to CCP all of the documents that were to have been delivered to CCP after the Project Transfer Date or in connection with the achievement of Final Completion, to the extent not previously delivered; and
5. CCP shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of this Agreement; provided that to the extent that the amount that would have been payable by CCP pursuant to upon the achievement of Final Completion and the performance of all of Developer's obligations hereunder exceeds all of CCP's damages, losses, liabilities, costs and expenses (including CCP's costs to perform post-closing Work and any attorneys' fees and enforcement costs in relation thereto), CCP shall pay such excess to Developer; provided, further, that CCP shall withhold any remaining amounts of the Cash Retention through the conclusion of the Warranty Callback Period.
 |
|  | CCP Events of Default; Termination by Developer | CCP shall be in default under the Agreement upon the occurrence of any of the following events (each a “CCP Event of Default”):* CCP contravenes any applicable law or applicable permit such that the ability of CCP to accept transfer of the Project from Developer on the Project Transfer Date or to pay the Contract Price in accordance with the Agreement is hindered, in either case, in a manner which causes a Material Adverse Effect;
* CCP becomes insolvent or bankrupt, or generally does not pay its debts as they become due, or admits its inability to pay its debts, or makes an assignment for the benefit of creditors or insolvency, receivership, reorganization, or bankruptcy proceedings are commenced by CCP;
* insolvency, receivership, reorganization, or bankruptcy proceedings are commenced against CCP, and such proceedings are not terminated, stayed, or dismissed within sixty (60) days after the commencement thereof;
* if any representation or warranty made by CCP in the Agreement is untrue or misleading in any material respect when made or when deemed made or repeated, and the same shall not be remedied within thirty (30) days after notice from Developer; or
* CCP fails to pay as and when due any undisputed amount required to be paid under the Agreement and the same shall not be remedied within thirty (30) days after notice from Developer.

Developer shall give notice of any CCP Event of Default to CCP. The Agreement will set forth the varying cure periods applicable to certain of the foregoing events of default, the expiration of which shall give rise to a right on the part of Developer to terminate. |
|  | No Fault Developer Termination Rights | With respect to any Facility in Queue Cluster 15 (as defined in the CAISO Tariff) or later, if the results of Developer’s Phase 2 Interconnection Study Report issued by CAISO and Transmission Owner indicate that:1. actual Network Upgrade Costs exceed the Expected Network Upgrade Costs; or
2. solely as a result of delays by the Transmission Owner and not attributable to any act or omission on the part of Developer, the earliest achievable Commercial Operation Date is later than the Guaranteed Substantial Completion Date;

then within thirty (30) days of its receipt of such Phase 2 Interconnection Study Report, Developer shall issue written notice to CCP providing detailed calculations in the form of a proposed Change Order to demonstrate the effect of such increased costs or delays upon the expected Contract Price or project schedule. Within thirty (30) days of receiving notice from Developer, CCP shall provide a responsive Notice to Seller stating whether CCP elects, as applicable, to: (x) pay for such excess Network Upgrade Costs by increasing the Contract Price; or (y) grant a day-for-day extension to the Guaranteed Substantial Completion Date and other relevant uncompleted milestones equal to the number of days for which the earliest achievable commercial operation date for the Facility is later than the Guaranteed Substantial Completion Date, if any. Developer shall within three (3) business days of CCP’s request, provide any other evidence reasonably requested by CCP to demonstrate the reasonableness and authenticity of any unanticipated Network Upgrade cost increases or delays to Guaranteed Substantial Completion Date, if any, and Developer’s corresponding calculation of the Contract Price increase, if any. If CCP’s Notice states that CCP will pay a higher Contract Price, if any, and/or extend the Guaranteed Substantial Completion Date and uncompleted milestones, as applicable, then the Parties shall execute a Change Order to this Agreement to formalize such buydown or extension within sixty (60) days after Developer receives notice of such election from CCP. Upon the execution of such Change Order, Developer shall no longer have any right to a Network Upgrade Cost Termination. If CCP fails to provide a responsive Notice to Seller within the thirty (30) day timeframe, or if the Parties fail to reach agreement and execute a Change Order within the foregoing sixty (60) day period, then Developer shall have the right to terminate the Agreement (a “Network Upgrade Cost Termination”), upon at least ten (10) days’ written notice to CCP that Developer elects to terminate. Within ten (10) days after any Network Upgrade Cost Termination, Developer shall be entitled to a return of the Required Credit Support amount minus the Network Upgrade Termination Fee. Upon any Network Upgrade Cost Termination, neither Party shall have any further liability to the other Party, save and except for those obligations that specifically survive the termination of the Agreement, including Developer’s Network Upgrade Termination Obligations.“CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures, and standards attached thereto, as the same may be amended or modified from time to time and approved by the Federal Energy Regulatory Commission.“Network Upgrade Costs” means the costs in respect the design, procurement, construction and installation of any additions, modifications, and upgrades to the transmission system of the Transmission Owner required at or beyond the point of interconnection to accommodate the interconnection of the Project to the transmission system of the Transmission Owner, including any reliability and deliverability network upgrades as defined in and pursuant to the Phase 2 Interconnection Study Report; provided that all such costs shall be borne by Developer and included in the Contract Price.“Network Upgrade Termination Fee” means the sum of: (a) for renewable generation, an amount equal to the product of: (i) $25/kW; and (ii) the guaranteed capacity in kW; and (b) for storage, an amount equal to the product of: (i) $6.25/kWh; (ii) the guaranteed capacity in kW; and (iii) the resource duration in hours.“Developer’s Network Upgrade Termination Obligations” means Developer’s obligations to not, and to cause all of its affiliates to not: (a) sell, market or deliver any products associated with or attributable to the Facility or relating to the interconnection queue position to a party other than CCP for a period of two (2) years following any Network Upgrade Cost Termination, unless prior to selling, marketing or delivering such products, or entering into the agreement to sell, market or deliver such products to a party other than CCP: (i) Developer or Developer’s affiliates provide CCP with a written offer to sell the product on terms and conditions materially similar to (A) the terms and conditions contained in this Agreement and (B) the terms and conditions contained in the CCP Pro-Forma PPA/ESSA; and (ii) CCP fails to accept such offer within forty-five (45) days of CCP’s receipt thereof; or (b) sell or transfer the Facility, the Facility Site, or any part thereof, unless the transferee agrees to be bound by the terms set forth in this section, pursuant to a written agreement approved by CCP. The Parties agree that Developer shall indemnify and hold CCP harmless from all benefits lost and other damages sustained by CCP as a result of any breach by Developer of any of its covenants or obligations contained within this section.“CCP Pro-Forma PPA/ESSA” means the template power purchase/energy storage service agreement of CCP, set forth in Exhibit D-3 to the Agreement.“Expected Network Upgrade Costs” means the expected network upgrade costs set forth in Developer’s bid.“Transmission Owner” means [\_\_\_\_\_\_\_\_]. |
|  | Consequences of Termination by Developer | If Developer terminates the Agreement prior to the Project Transfer Date for any reason other than a CCP Event of Default, CCP shall have no further obligations, including any obligations to make payments to Developer, under this Agreement.If Developer terminates the Agreement prior to the Project Transfer Date due to any CCP Events of Default, then the following shall apply:1. Developer shall be relieved of any further obligation to CCP under the Agreement, including the obligation to transfer the Project to CCP, except for those provisions that expressly survive termination as set forth in the Agreement;
2. CCP shall remove its personnel and any personal property belonging to CCP or its personnel from the Facility site (or other location where the field construction office for the Project may be located) and shall refrain and cause its personnel to refrain from taking from the Facility site or the field construction office any documents constituting confidential information of Developer or its affiliates or of any subcontractors; and
3. Developer shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of the Agreement.

If Developer terminates this Agreement on or after the Project Transfer Date due to any CCP Events of Default, then CCP shall retain all right, title and interest to the Work and the Project and the following shall apply:1. Developer shall be relieved of any further obligation to CCP under the Agreement, except for those provisions that expressly survive termination as set forth in the Agreement;
2. Developer shall remove its personnel and any personal property belonging to Developer or its personnel from the Facility site (or other location where the field construction office for the Project may be located) and shall refrain and cause its personnel to refrain from taking from the Facility site or the field construction office any documents constituting confidential information of CCP or its affiliates;
3. Developer shall deliver to CCP all of the documents that were to have been delivered to CCP at or prior to the achievement of Final Completion, to the extent not previously delivered; and
4. Developer shall be entitled to all legal and equitable remedies that are not expressly prohibited or limited by the terms of this Agreement.
 |
|  | Project Participant Approval | Each Project Participant must obtain all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and Project Participation Share Agreement (“Project Participant Approval”).If Project Participant Approval of the Agreement is not obtained within [\_\_\_\_] days following CCP Board approval of the Agreement, then either Party may terminate the Agreement upon written Notice to the other Party. |
|  | Limitations on Liability; Waiver of Consequential Damages | In no event shall Developer’s total liability in connection with the Agreement, whether arising in contract or breach of contract, indemnity, warranty or breach of warranty, tort (including strict liability), or otherwise, be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price; provided that the foregoing limitation shall not limit Developer’s liability or costs with respect to: (a) its obligation to achieve Substantial Completion and Final Completion prior to the termination of the Agreement; (b) Developer’s indemnification obligations with respect to third party Claims; (c) any intentional breach, willful misconduct, gross negligence, or fraud on the part of Developer or any subcontractor; or (d) Claims for unauthorized disclosure of or use or infringement of any intellectual property (whether or not legally protected or protectable) in connection with, arising out of or in any way related to Developer’s performance under the Agreement or that of Developer’s affiliates.In no event shall Developer’s liability for Delay Liquidated Damages payable pursuant to the Agreement exceed [\_\_\_] percent (\_\_%) of the Contract Price (the “Delay LD Cap”).In no event shall the aggregate liability of CCP pursuant to the Agreement whether arising in contract, warranty, or otherwise, be greater than twenty-five percent (25%) of the Contract Price; provided that this shall not be construed to limit CCP’s liability or costs in performing (as the case may be) with respect to: (a) CCP’s indemnification obligations with respect to third party Claims; (b) any willful misconduct, gross negligence or fraud on the part of CCP; (c) CCP’s obligation to pay the Contract Price; or (d) Claims for unauthorized disclosure of or use or infringement of any intellectual property (whether or not legally protected or protectable) in connection with, arising out of or in any way related to CCP’s performance under the Agreement or that of its affiliates.Except for Delay Liquidated Damages, neither Party nor such Party’s subcontractors shall be liable to the other Party or its affiliates, or any of their agents, employees, officers, directors, or shareholders for any loss of profits, loss of revenue, increased cost of capital, or financing or other carrying charges, product or business interruption, increased costs of operations, maintenance or staffing needs, or loss of use of a Project, or costs of replacement power, or any indirect, consequential, punitive, exemplary, or special damages arising from a failure to perform any obligation under the Agreement, whether such liability arises in contract or breach of contract, indemnity, warranty or breach of warranty, tort (including negligence or strict liability), or otherwise, except to the extent of any liability arising from either Party’s duty to indemnify under the Agreement for third party Claims may be characterized as consequential in nature. |
|  | Indemnities | Developer shall indemnify, defend and hold harmless CCP, its affiliates and its and their respective members, officers, agents, employees, successors and assigns (each, a “CCP Indemnified Party”) from and against any and all suits, actions, legal or administrative proceedings, Claims, losses (including any reduction in the value of the Project to CCP), liabilities, fines, demands, costs (including reasonable attorneys’ fees), and expenses of any nature (collectively, “Claims”) for: (a) death or personal injury to any person, or physical damage to the property of third parties, to the extent that the same arise out of any breach of the Agreement, or any other act or omission of Developer or any subcontractor; (b) any failure by Developer to pay, perform, or discharge any liabilities not expressly assumed by CCP under the Agreement; (c) any Claims, obligations, or payments under with respect to any Project Contract (including the EPC Contract and each equipment supply agreement) arising prior to the Project Transfer Date, or in connection with the achievement of Substantial Completion or Final Completion, or Developer’s obligations under the Agreement after the Project Transfer Date (including the Post-Closing Work); (d) any excluded taxes; and (e) breach of any covenant set forth herein or any inaccuracy in, or breach of, a representation or warranty of Developer in the Agreement or in any certificate or document delivered by Developer hereunder, including any Tax Credit Certificate.Developer shall indemnify, defend, and hold harmless each CCP Indemnified Party from and against all Claims and liens incurred by or assessed against any CCP Indemnified Party on account of any Claim of infringement or other violation of any patent, copyrighted or un-copyrighted work, secret process, trade secret, unpatented invention, or other intellectual property right related to or arising from Developer’s Work under the Agreement. In addition, and in all such cases where the continued use of any item for the purpose intended is forbidden by any court or competent jurisdiction, Developer shall at its option either: (a) procure for CCP, or reimburse CCP for procuring, the right to continue using the infringing item; (b) modify the infringing item so that it becomes non-infringing; or (c) replace the infringing item with a non-infringing item.Developer shall indemnify, defend and hold each CCP Indemnified Party harmless from and against all Claims attributable to any failure of Developer or subcontractors to comply with applicable law or any applicable permits in connection with the performance of the Work.Developer shall indemnify, defend and hold harmless each CCP Indemnified Party from and against any Claim to the extent caused by a breach of Developer’s obligations or for a Release of Hazardous Materials caused or exacerbated by Developer’s work at, on, or under the Facility Site, including work by Developer’s employees, contractors, agents, assigns, visitors, or other Persons under the control of Developer.Developer shall indemnify, defend and hold harmless CCP from and against any lien, encumbrance, or security interest in, on or to the Facility Site or the Project asserted by any Person and from and against any breach of Developer’s obligations under any financing arrangements.CCP shall indemnify, defend and hold harmless Developer, its affiliates, any financing parties providing financing for the Work, and its and their respective officers, agents, employees, successors and assigns from and against any and all Claims for: (a) death or personal injury to any person or physical damage to the property of third parties to the extent that the same arise out of the gross negligence or willful misconduct of CCP or any of its employees, contractors or agents, except to the extent caused by the negligence or willful misconduct of Developer or its employees, contractors or agents; (b) any failure by CCP to pay, perform, or discharge any liabilities and obligations under the Agreement that are assumed by CCP on the Project Transfer Date as and when required hereunder; and (c) any inaccuracy in, or breach of, a representation or warranty of CCP given as of the Project Transfer Date pursuant to the Agreement. |
|  | Title; Risk of Loss | Title to the Project shall transfer from Developer to CCP on the Project Transfer Date.Developer warrants and guarantees that legal title to and ownership of the Work shall be free and clear of any and all liens, Claims, security interests, or other encumbrances when title thereto passes to CCP upon the Project Transfer Date, other than permitted encumbrances.Developer shall bear the risk of loss and damage with respect to the Project and the Work until the Project Transfer Date. |
|  | Governing Law | California. |
|  | Dispute Resolution | Except as otherwise provided in the Agreement, in the event a controversy, Claim, or dispute arises between the Parties regarding the application or interpretation of any provision of the Agreement or the breach, termination, or validity thereof (each, a “Dispute”), the Party alleging the Dispute shall promptly notify the other Party of the Dispute. If the Parties shall have failed to resolve the Dispute within ten (10) days after delivery of such written notice, each Party shall, within ten (10) business days after receipt of a written demand from the other Party to do so, direct a senior executive (Vice President level or above) to confer in good faith within fifteen (15) business days with a senior executive of the other Party to resolve the Dispute. 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, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to them at Law in or equity. The Parties shall cooperate in selecting a qualified neutral mediator and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator’s fees, equally, but such shared costs shall not include each Party’s own attorneys’ fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in the Agreement. |
|  | Other Provisions | The Agreement will include other customary provisions, including, but not limited to, the following: representations and warranties; covenants; recovery plans; terms; guarantees; cooperation; insurance; and financing terms.  |

1. **NTD:** Subject to further updates following discussion among CCP and the Project Participants regarding the form of Project Participant involvement. [↑](#footnote-ref-2)