IMPORT CAPABILITY TRANSFER

Confirmation Letter

BETWEEN

[seller]

AND

clean power ALLIANCE of southern california

This confirmation letter including all appendices hereto (“Confirmation”) confirms the Transaction between **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“Seller”) and **Clean Power Alliance of Southern California**, a California joint powers authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of \_\_\_\_\_\_\_\_\_\_\_, 2018 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute (“EEI”) Master Power Purchase and Sale Agreement between the Parties, effective as of \_\_\_\_\_\_\_\_\_\_\_, 2018 along with the Cover Sheet, and any amendments and annexes thereto (the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

# ARTICLE 1

# Transaction

## Product

Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, the Remaining Import Capability (the “Product”), at the Delivery Point in the amount of the Contract Quantity at the Contract Price for the Delivery Period.

## Delivery Period and Term

### Delivery Period. The Delivery Period is through , inclusive, unless terminated earlier in accordance with the terms of this Agreement.

### Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date that the Parties’ obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

## Contract Quantity

For the Delivery Period, Seller shall transfer the Product to Buyer in the amount as follows (the “Contract Quantity”).

Contract Quantity (MW)

| Contract Year | Contract Month | Contract Quantity (MWs) |
| --- | --- | --- |
|  |  |  |

## Contract Price

The Contract Price means, for any Contract Month, the price specified in the Contract Price table as set forth below.

CONTRACT PRICE TABLE

|  |  |  |
| --- | --- | --- |
| Contract Year | Contract Month | Contract Price($/kW-month) |
|  |  |  |

## Delivery Point

The Delivery Point shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# ARTICLE 2

# Delivery Obligations

## Delivery

Within three (3) Business Days from the Confirmation Effective Date, Buyer shall register the transfer from Seller of the Product in the amount of the Contract Quantity at the Delivery Point with the CAISO as a Bilateral Import Capability Transfer by submitting an e-mail substantially in the form of Appendix B, and completing any other action or documentation required by the CAISO to effect such transfer (the “Registration”). As soon as reasonably practicable thereafter, Seller shall confirm Buyer’s Registration with the CAISO by e-mail. Buyer shall cause the CAISO to indicate whether the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point was successful or unsuccessful, by e-mailing both Buyer and Seller within eleven (11) Business Days from the Registration (a successful transfer, the “Transfer Completion Email”). If the transfer from Seller to Buyer of the Product in the amount of the Contract Quantity at the Delivery Point is unsuccessful, the Parties shall begin the registration process set forth in this Section 2.01 again, until the Parties receive a Transfer Completion Email.

## Buyer’s Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

# ARTICLE 3

# Payment

## One-Time Payment

Buyer shall make a One-Time Payment to Seller for the Product on the twenty-third (23rd) day of the month occurring at least five (5) Business Days after the later of: (a) receipt of the Transfer Completion Email from the CAISO; or (b) receipt of Seller’s invoice.

The One-Time Payment is calculated as follows:

One-Time Payment = $\sum\_{i}^{n}(Ai ×Bi×1,000)$

where:

A = Contract Price (in $/kW-month) for Contract Month *i*

B = Contract Quantity *i* (in MW) transferred by Seller for Contract Month *i*

i = Each Contract Month

n = number of Contract Months

The One-Time Payment calculation shall be rounded to two decimal places.

## Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

# ARTICLE 4

# Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that:

### Seller may disclose the terms and conditions of this Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the Independent Evaluator;

### Seller and the Independent Evaluator may disclose the terms and conditions of this Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, any Governmental Authority, and participants of the procurement review group established pursuant to D.02-08-071 and D.03-06-071;

### both Parties may disclose the terms of this Confirmation to the CAISO to effectuate Seller’s performance and the transfer of the Product and the Parties acknowledge that the CAISO may publicly disclose the transfer of the Product from Seller to Buyer in accordance with the CAISO Tariff promptly following Seller’s performance; and

### in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price;

provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority or the CAISO to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

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**Acknowledged and agreed to as of** **the Confirmation Effective Date.**

|  |  |
| --- | --- |
| **[SELLER]** |  **CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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# APPENDIX A

DEFINED TERMS

“Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Applicable Laws” means any constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgements, decrees, injunctions, writs and orders of any Governmental Authority having jurisdiction over one or both Parties, this Transaction, or the terms of this Agreement.

“Bilateral Import Capability Transfer” is the transfer of Remaining Import Capability from one Market Participant (as defined in the CAISO Tariff) to another, as described in the CAISO Tariff.

“Branch Group” means the branch group name used by the CAISO to represent the location of an Intertie with a Maximum Import Capability.

“Buyer” has the meaning specified in the introductory paragraph of this Confirmation.

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

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, 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, if applicable.

“CEC” means the California Energy Commission.

“Collateral Annex” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation” has the meaning specified in the introductory paragraph of this Confirmation.

“Confirmation Effective Date” has the meaning specified in the introductory paragraph of this Confirmation.

“Contract Month” means the month during the Delivery Period as set forth in the Contract Quantity Table specified Section 1.03.

“Contract Price” has the meaning specified in Section 1.04.

“Contract Quantity” has the meaning specified in Section 1.03.

“Cover Sheet” has the meaning specified in the introductory paragraph of this Confirmation.

“CPUC” means the California Public Utilities Commission.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by S&P or Moody’s. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by any Ratings Agency, then “Credit Rating” means the general corporate credit rating or long-term issuer rating assigned to such entity by S&P or Moody’s. If an entity is rated by more than one Ratings Agency and the ratings are at different levels, then “Credit Rating” means the lowest such rating.

“Delivery Period” has the meaning specified in Section 1.02(a).

“Delivery Point” has the meaning specified in Section 1.05.

“EEI” has the meaning specified in the introductory paragraph of this Confirmation.

“Good Utility Practice” has the meaning set forth in the CAISO Tariff.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Independent Evaluator” has the meaning set forth in CPUC Decision 04-12-048.

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

“Investment Grade Rating” means a Credit Rating of “BBB- or above” by S&P and “Baa3 or above” by Moody’s if rated by both S&P and Moody’s or “BBB- or above” by S&P or “Baa3 or above” by Moody’s if rated by S&P or Moody’s but not both.

“Master Agreement” has the meaning specified in the introductory paragraph of this Confirmation.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff.

“Moody’s” means Moody’s Investor Services, Inc.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“One-Time Payment” has the meaning specified in Section 3.01.

“Pre-Pay Buyer” means a Buyer who fails to maintain an Investment Grade Rating or has no Credit Rating, or whose guarantor fails to maintain an Investment Grade Rating or has no Credit Rating.

“Product” has the meaning specified in Section 1.01.

“Ratings Agency” means any of S&P and Moody’s (collectively the “Ratings Agencies”).

“Registration” has the meaning specified in Section 2.01.

“Remaining Import Capability” has the meaning set forth in the CAISO Tariff.

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

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

“Seller” has the meaning specified in the introductory paragraph of this Confirmation.

“S&P” means Standard & Poor’s Financial Services LLC.

“Term” has the meaning specified in Section 1.02(b).

“Transfer Completion Email” has the meaning specified in Section 2.01.

**APPENDIX B**

**Bilateral Import Capability Transfer Registration Email**

To:  ReliabilityRequirements@caiso.com

Cc:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subject:  Transfer of Remaining Import Capability from \_\_\_\_ to \_\_\_\_

Reliability Requirements Team,

[Transferor] (\_\_\_) and [Transferee] have transacted the following transfer of Remaining Import Capability.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Transferor** | **Transferee** | **MW** | **Branch Group** | **Start Date** | **End Date** | **Price** |
|  |  |  |  |  |  |  |

Upon confirmation of transaction from [Transferor]’s eligible contact, please update CAISO systems to reflect this transfer and reply-all when systems have been updated.

Thank you,

\_\_\_\_\_\_\_\_\_\_