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BENICIA | CONCORD | DANVILLE | EL CERRITO | FAIRFIELD | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY  
PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

## Technical Committee Meeting Thursday, March 3, 2022 8:30 A.M.

This Meeting will be conducted via teleconference pursuant to the requirements of [Assembly Bill No. 361](#). By using teleconference for this meeting, MCE continues to promote social distancing measures recommended by local officials.

Members of the public who wish to observe the Meeting and/or offer public comment may do so telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/88221162906?pwd=anRLWVl0czBmRlNlNlVjV0UDBQcGJ3UT09>

Dial: 1-669-900-9128  
Webinar ID: 882 2116 2906  
Meeting Password: 589877

### Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 2.3.22 Meeting Minutes
  - C.2 Proposed First Amendment to Master Services Agreement with R Systems International Limited
  - C.3 MCE Resiliency Fund Expenditure for Vulnerable, Critical Needs Customers
6. Power Purchase Agreements with CES Electron Farm One, LLC (Discussion/Action)

## Agenda Page 2 of 2

7. Committee Matters & Staff Matters (Discussion)
8. Adjourn

*The Technical Committee may discuss and/or take action on any or all of the items listed on the agenda irrespective of how the items are described.*

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.

**DRAFT**

**MCE TECHNICAL COMMITTEE MEETING MINUTES**

**Thursday, February 3, 2022**

**8:30 A.M.**

The Technical Committee Meeting was conducted pursuant to the requirements of [Assembly Bill No. 361](#) (September 16, 2021) which allows a public agency to use teleconferencing during a Governor-proclaimed state of emergency without meeting usual [Ralph M. Brown Act](#) teleconference requirements. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

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**Present:** Kevin Haroff, City of Larkspur  
 Katie Rice, County of Marin  
 Devin Murphy, City of Pinole  
 Ford Greene, Town of San Anselmo, Chair  
 Scott Perkins, City of San Ramon  
 Katy Miessner, City of Vallejo

**Absent:** Edi Birsan, City of Concord  
 John Gioia, Contra Costa County  
 Teresa Onoda, Town of Moraga

**Staff**

**& Others:** Jesica Brooks, Assistant Board Clerk  
 Darlene Jackson, Board Clerk  
 Vicken Kasarjian, Chief Operating Officer  
 David Potovsky, Principal Power Procurement Manager  
 Evelyn Reyes, Administrative Services Assistant II  
 Dawn Weisz, Chief Executive Officer  
 Brett Wiley, Customer Programs Manager

**1. Roll Call**

Chair Greene called the regular Technical Committee meeting to order at 8:31 a.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were no announcements.

**3. Public Open Time (Discussion)**

Chair Greene opened the public comment period and there were no comments.

**4. Report from Chief Executive Officer (Discussion)**

CEO Dawn Weisz, reported the following:

- MCE is hosting a Heritage History Month blog series this month and will be highlighting Black Americans in February. Please let us know if you would be interested in being featured in February or in a future heritage history month.

**DRAFT**

- Our policy team has been meeting with our local State delegation, our CPUC and CEC Commissioners for annual meet and greets. We will be starting to meet with our federal delegation later this month.
- On February 9, 2022 PANC Virtual Lunch Meeting will feature our own Director of Customer Programs, Alice Havenar-Daughton, who will be speaking on MCE's PeakFlex Market program.
- As a result of inquiries to some of our Board members from IBEW locals in our region concerning our workforce, education and training (WE&T) program, MCE WE&T team met with IBEW Local 551 on Tuesday February 2 to discuss the program. Director Holli Thier, Town of Tiburon, participated in the meeting.

**5. Consent Calendar (Discussion/Action)**

**C.1 Approval of 12.2.21 Meeting Minutes**

Chair Greene opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Miessner) to **approve Consent Calendar item.** Motion carried by unanimous roll call vote. (Absent: Directors: Dawson, Gioia, and Onoda).

**6. Power Purchase Agreement with Golden Fields Solar IV, LLC (Discussion/Action)**

David Potovsky, Principal Power Procurement Manager, presented this item and addressed questions from Committee members.

Chair Greene opened the public comment period and comments were made by Howdy Goudey and Dan Segedin.

Action: It was M/S/C (Haroff/Perkins) to **authorize execution of the Power Purchase Agreement with Golden Fields Solar IV, LLC for renewable energy supply and BESS capacity.** (Absent: Directors: Birsan, Gioia, Miessner, Onoda).

**7. MCEv Sync – Smart Charging Early Pilot Results (Discussion)**

Brett Wiley, Customer Programs Manager, presented this item and addressed questions from Committee members.

Chair Greene opened the public comment period comments were made by Dan Segedin and Howdy Goudey.

Action: No action required.

**8. Committee & Staff Matters (Discussion)**

There were none.

**DRAFT**

9. Adjournment

Chair Greene adjourned the meeting at 9:57 a.m. to the next scheduled Technical Committee Meeting on March 3, 2022.

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Ford Greene, Chair

Attest:

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Dawn Weisz, Secretary



March 3, 2022

TO: MCE Technical Committee

FROM: Vicken Kasarjian, Chief Operating Officer  
Shuvo Chowdhury, Director of Technology and Analytics

RE: Proposed First Amendment to Master Services Agreement with  
R Systems International Limited (Agenda Item #05 C.2)

ATTACHMENTS: A. Proposed First Amendment to Master Services Agreement  
with R Systems International Limited  
B. Master Services Agreement with R Systems International  
Limited; Schedule A.1 Statement of Work for Data Analytics  
Platform; Schedule A.2 Statement of Work for Customer  
Relationship Management  
C. Schedule A.3 Statement of Work for Data Analytics Platform;  
Schedule A.4 Statement of Work for Customer Relationship  
Management  
D. Schedule A.5 Statement of Work for Data Analytics Platform;  
Schedule A.6 Statement of Work for Customer Relationship  
Management

Dear Technical Committee Members:

**Summary:** MCE has been working to create a comprehensive cloud-based data management platform, owned and operated by MCE, consisting of two broader services – a Data Analytics Platform (DAP) and a Customer Relationship Management Platform (CRM). On April 13, 2021, this Committee approved the Master Services Agreement with R Systems International Limited. This umbrella agreement allowed for phases 2 - 4 (captured in Schedules A.1-A.6 Statements of Work) of the data management platform project to be completed during the last year. In these phases, R Systems:

- Created a robust data processing solution for weekly customer data that MCE receives from PG&E with an end-to-end automated process flow in consuming, ingesting, and preparing the analytic-ready stage within the DAP;
- Supported the certified and quality-assured data;
- Provided data feeds to MCE's CRM;
- Built the base structure and functionality for MCE's CRM, which supports specific use cases defined by the Public Affairs Team;
- Established a regular syncing process between DAP and CRM;
- Built MCE's CRM as a user interface to view, report and maintain customer-centric information; and
- Integrated MCE's programs with customer data.

MCE is proposing to continue working with R Systems through a First Amendment to Master Services Agreement (Proposed Amendment) to complete the overall data management platform project which would include additional phases for the DAP and CRM. As each phase is completed, MCE will work with R Systems to finalize the scope of the next phase and execute a Statement of Work for that next phase within the approved not-to-exceed amounts.

### DAP

The DAP is a robust platform that supports data storage, data warehousing, data analytics, reporting needs, and serves as a central and secure repository of all MCE data. The following DAP functionalities were built out in the phases that have been completed by R Systems:

- Customer attribute data;
- Monthly and interval electricity and gas usage data;
- Public Safety Power Shutoff (PSPS) data;
- Interconnection data;
- Customer segmentation; and
- Distributed energy resources support and management.

If the Proposed Amendment is approved by this Committee, the DAP could be further developed over the next 12 months with the following additional functionalities:

- Additional customer information such as opt-outs and opt-ins;
- Business driven dashboards for critical operational insights;

- Support data needs for new projects; and
- Support customer data beyond 3 years.

### CRM

Using MCE customer data housed in the DAP, MCE's CRM currently serves as the primary system for accessing customer information. The following CRM functionalities were built out in the phases that have been completed by R Systems:

- Customer characteristics (name, address, enrollment details);
- Customer electricity usage summaries;
- Customer billing summaries;
- Dynamically updated "Top 250" reporting;
- Internally derived customer metrics (usage intensity, etc.);
- Account hierarchies;
- Case management;
- Third party customer data (tax assessor, sunroof, etc.);
- Customer program participation; and
- Platform for supporting Customer Service Representatives (CSRs).

If the Proposed Amendment is approved by this Committee, the CRM could be further developed over the next 12 months with the following additional functionalities:

- Integration of MCE telephony system into the CRM to increase workflow efficiency of MCE CSRs;
- Ability to view and record prior activities on customer accounts taken from both the Calpine CRM platform and the MCE CRM;
- Ability to view PG&E "blue bills" connected to each customer;
- If approved, the MCE CRM would become the System of Record and the Single Source of Truth and provide a 360-degree view when it comes to MCE Customers; and
- Provide the Customer Care and Engagement team tools to track, assess, record and convert leads and opportunities into projects.

### The Agreement

The Proposed Amendment would extend the term of the current agreement for an



additional year and add an additional \$700,000 to the not-to-exceed amount. If approved, MCE could continue to enhance the functionality of DAP and CRM in the next phases. The Proposed Amendment would allow for MCE's Chief Executive Officer or Chief Operating Officer to approve additional statements of work within the overall not-to-exceed amount so that the data management platform project can continue without interruption. Staff recommends approval of the First Amendment to Master Services Agreement with R Systems International Limited with a not-to-exceed amount of \$1,250,000 for the continuation of DAP and CRM development in Fiscal Year (FY) 2022/23. This represents an increase of \$700,000 over the existing agreement with R Systems.

**Fiscal Impacts:** Net increase in contract amount of \$700,000. Costs incurred in FY 2021/22 are captured in the FY 2021/22 Operating Fund Budget. Costs related to the Proposed Amendment are included in the Proposed FY 2022/23 Operating Fund Budget.

**Recommendation:** Approve the proposed First Amendment to Master Services Agreement with R Systems International Limited.

# **FIRST AMENDMENT TO MASTER SERVICES AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND R SYSTEMS INTERNATIONAL LIMITED**

This FIRST AMENDMENT TO MASTER SERVICES AGREEMENT is made and entered into on \_\_\_\_\_, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and R SYSTEMS INTERNATIONAL LIMITED (hereinafter referred to as "Contractor").

## RECITALS

WHEREAS, MCE and Contractor entered into a Master Services Agreement on April 9, 2021 to implement phases of the Data Analytics Platform and Customer Relationship Manager Platform ("MSA"); and

WHEREAS, Section 3 and Exhibit B to the MSA provided for Contractor to be compensated in an amount not to exceed \$550,000 for the services described within the statements of work therein; and

WHEREAS, the parties desire to amend the MSA to increase the contract amount by \$700,000 for total consideration not to exceed \$1,250,000; and

WHEREAS, Section 4 of the MSA stated the MSA shall terminate on March 31, 2022; and

WHEREAS, the parties desire to amend the MSA to extend the time of the MSA;

NOW, THEREFORE, the parties agree to modify Section 3, Section 4, and Exhibit B as set forth below.

## MSA

1. Section 3 is hereby amended to read as follows:

### **MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$1,250,000**.

2. Section 4 is hereby amended to read as follows:

### **TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2023**, unless earlier terminated pursuant the terms and conditions set forth in Section 12.

3. The last sentence of Exhibit B is hereby amended to read as follows:

In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of \$1,250,000** for the term of the Agreement.

4. Except as otherwise provided herein all terms and conditions of the MSA shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this FIRST AMENDMENT TO MASTER SERVICES AGREEMENT on the day first written above.

MARIN CLEAN ENERGY:

CONTRACTOR:

By:

By:

Date:

Date:

CHAIRPERSON:

By:

Date:

**MASTER SERVICES AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND R SYSTEMS INTERNATIONAL LIMITED**

**THIS MASTER SERVICES AGREEMENT** ("Agreement") is made and entered into on **April 9, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") with principal office at 1125 Tamalpais Avenue, San Rafael, CA 94901 and R Systems International Limited, an Indian corporation with principal office at C-40, Sector 59, Noida 201307 UP India and United States address at: 5000 Windplay Drive, El Dorado Hills, CA 95762 (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

**RECITALS:**

**WHEREAS**, MCE desires to retain Contractor to provide the services described in statements of work ("Statement of Work") to be agreed by the Parties, in form and substance as set forth on **Exhibit A** attached hereto, and which shall be considered Schedules hereto;

Each Statement of Work executed by and between the Parties are made a part hereof ("Services");

**WHEREAS**, Contractor desires to provide the Services to MCE;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement.

**2. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing Services under this Agreement shall be based on a time and materials basis and as further set forth in **Exhibit B** and by this reference incorporated herein. The hourly rates in Exhibit B shall remain in effect for the entire term of the Agreement ("Term"). The hourly rates in Exhibit B are exclusive of any applicable sales tax or GST which shall be added on the invoices. MCE will pay the applicable fees after MCE reviews and accepts the itemized invoices provided by Contractor for a particular Statement of Work on a monthly basis for services rendered the month prior. Contractor will bill MCE based on the number of hours expended on a Statement of Work for that month, however MCE will not be obligated to pay the applicable fees unless and until MCE Manager of Technology and Analytics has accepted the weekly Deliverables (as set forth in each Statement of Work and attachments thereto) delivered during the invoiced month. Invoices submitted by Contractor shall be considered as accepted and final in case there is no objection by MCE, in writing, within twenty-one business (21) days from the date of submission of the invoice. Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days after acceptance of the applicable Deliverables.

**3. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **\$550,000**.

**4. TERM OF AGREEMENT:**

This Agreement shall commence on **April 1, 2021** ("Effective Date") and shall terminate on **March 31, 2022**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

**5. REPRESENTATIONS; WARRANTIES; COVENANTS:**

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) it is a **corporation** duly organized, validly existing and in good standing under the laws of India, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits, schedules and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified

and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits, schedules and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit, schedule and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

- 5.2. RIGHTS AND AUTHORITY.** Contractor represents, warrants and covenants that the Services and Deliverables will not: (i) infringe any third-party patent, copyright, trademark, trade secret, or other proprietary right, (ii) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or MCE's network or systems and (iii) the Deliverables are not governed, in whole or in part, by an Excluded License. "Excluded License" means any software license requiring, as a condition of use, modification, or distribution that the software or other software combined or distributed with it be (i) disclosed or distributed in source code form, (ii) licensed to make derivative works, or (iii) redistributable at no charge.
- 5.3. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")
- 5.4. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
- 5.5. NONDISCRIMINATORY EMPLOYMENT:** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
- 5.6. PERFORMANCE ASSURANCE:** Regardless of the specific Services provided, Contractor shall also maintain any performance assurances as may be reasonably requested by MCE during the performance of the Services.
- 5.7. SAFETY:** At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:
- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
  - (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
  - (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
  - (d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
  - (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
  - (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
  - (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.
- 5.8. BACKGROUND CHECKS:**
- (a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.

(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to perform the Services, or at any time after the individual's date of, assignment to perform the Services, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations ("RICO") Statute (18 U.S.C. Sections 1961-1968)).

(c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor shall also immediately prevent that employee, representative, or agent from performing any Services.

**5.9. FITNESS FOR DUTY:** Contractor shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform the Services properly and safely. Contractor shall, and shall cause its Subcontractors to, have policies in place that require their employees, contractors, subcontractors and agents to report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

**5.10. QUALITY ASSURANCE PROCEDURES** (REQUIRED IF CHECKED ☒). Contractor shall comply with the Quality Assurance Procedures and requirements as established in any Statement of Work.

Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; and (ii) procedures that ensure Measure functionality, customer satisfaction, and that the Minimum Qualifications are satisfied

**5.11. ASSIGNMENT OF PERSONNEL.** The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**5.12. ACCESS TO CUSTOMER SITES** (REQUIRED IF CHECKED ☐). Contractor shall be responsible for obtaining any and all access rights for Contractor Parties, from customers and other third parties to the extent necessary to perform the Services. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

## **6. INSURANCE:**

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Contractor shall provide thirty (30) days' advance written notice to MCE of any cancellation or reduction in coverage; failure to provide such notice will be a material breach of this Agreement and MCE may immediately terminate this Agreement or take other actions in its discretion. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

**6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars (\$2,000,000) per incident with a four million dollar (\$4,000,000) aggregate limit.** "Marin Clean

Energy” shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

- 6.2. AUTO LIABILITY (REQUIRED IF CHECKED ☒).** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000) and in aggregate. This liability will only be applicable when automobile use is required for performing Services under applicable Statement of Work.
- 6.3. WORKERS' COMPENSATION.** The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services in compliance with applicable law.
- 6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒.** Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident and \$2,000,000 USD in aggregate. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.
- 6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☒.** Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence and \$2,000,000 USD in aggregate.

**7. OMITTED.**

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except to R Systems, Inc. which is Contractor's subsidiary or for any subcontract work expressly identified in each Statement of Work and attachments thereto. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

- 8.1.** Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, each Statement of Work and attachments thereto.
- 8.2.** Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.
- 8.3.** Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.
- 8.4.** Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.
- 8.5.** Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties

shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

#### **9. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:**

**10.1. DEFINITION OF "MCE DATA".** "MCE Data" shall mean all data or information provided by or on behalf of MCE, including but not limited to, customer Personal Information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manuals, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of MCE to Contractor as MCE may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Contractor. MCE Data shall also include all data and materials provided by or made available to Contractor by MCE's licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between MCE and their licensors.

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **July 13, 2020**.

**10.2. DEFINITION OF "PERSONAL INFORMATION".** "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

**10.3. MCE DATA SECURITY MEASURES.** Prior to Contractor receiving or having access to any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **July 13, 2020**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

**10.4. CONTRACTOR DATA SECURITY MEASURES.** Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

**10.5. RETURN OF MCE DATA.** Promptly after this Agreement or a Statement of work terminates or expires, and for each Statement of work, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

#### **10.6. OWNERSHIP AND USE RIGHTS.**

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.



- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party upon payment of all applicable undisputed invoices as per section 2 of this Agreement. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.
- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

**10.7. EQUITABLE RELIEF.** Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data or Personal Information, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

## **11. FORCE MAJEURE:**

Neither Party shall be responsible for delays or failures in performance resulting from unforeseen acts of God, strikes, lockouts, riots, acts of war, and government regulations (collectively, a "Force Majeure Event") where the Party seeking to excuse its performance has used commercially reasonable efforts to ensure its ability to perform despite a Force Majeure Event, including having and maintaining a commercially reasonable business continuity program. A Party that is unable to perform due to a Force Majeure Event must give the other Party prompt notice but no less than three (3) business days after it becomes aware of or reasonably believes it will be unable to perform due to a Force Majeure Event. If as a consequence of Force Majeure, performance by a Party under this Agreement is prevented for a period longer than one (1) month, then the other Party shall have the right to terminate this Agreement without penalties, provided however, MCE will be obligated to pay for any Services it has received and accepted prior to the date the Agreement is terminated.

## **12. TERMINATION:**

**12.1. Breach; Convenience.** Either party may terminate this Agreement or any Statement of Work if the other party is in material breach of any of its obligations under this Agreement and has not cured the breach within thirty (30) days of written notice specifying the breach. MCE may terminate this Agreement or any Statement of work for any reason by giving Contractor thirty (30) calendar days' written notice. Further, MCE may terminate this Agreement including any Statement of Work immediately by providing notice if Contractor: (a) breaches its confidentiality obligations or (b) files for bankruptcy, becomes insolvent or makes an assignment for the benefit of its creditors.

**12.2. Effect.** In the event of termination not the fault of Contractor, Contractor shall be paid for Services performed to the date of termination and accepted in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement, amendment(s), or schedules. Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any

cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all reports, drawings, documents and deliverables prepared for MCE before the effective date of such cancellation or termination.

**12.3. Changes.** This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive. MCE may also terminate this Agreement or any Statement of Work if funding for this Agreement or any Statement of Work is reduced or eliminated by a third-party funding source.

**12.4. Transition.** Upon MCE's termination of this Agreement or any Statement of Work for any reason, Contractor shall, and shall cause each Contractor Party to, bring the Services to an orderly conclusion as directed by MCE. Contractor and each Contractor Party shall vacate the worksite but shall not remove any material, plant or equipment thereon without the approval of MCE. MCE, at its option, may take possession of any portion of the Services paid for by MCE.

### **13. ASSIGNMENT:**

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE except to R Systems, Inc. which is Contractor's subsidiary.

### **14. AMENDMENT; NO WAIVER:**

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

### **15. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations in the course of any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

### **16. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California. Neither Party will claim lack of personal jurisdiction or forum non conveniens in these courts. Contractor agrees that MCE may serve process on its California subsidiary, R Systems Inc.

### **17. INDEMNIFICATION:**

**17.1 Indemnification.** Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, (collectively "MCE Indemnified Parties"), harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all Claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement or any Statement of Work. Additionally, Contractor will defend, indemnify, and hold MCE Indemnified Parties harmless from and against all Claims to the extent such Claims arise out of or relate to:

- (A) Contractor's breach of Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.8, 5.9 and Section 10,
- (B) Contractor's infringement, misuse, or misappropriation of third-party intellectual property or proprietary rights, or
- (C) Contractor's non-compliance with applicable laws, rules, or regulations.

"Claim(s)" means any and all (1) third-party claims, actions, demands, lawsuits, or proceedings and (2) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement or order issued by a governmental, regulatory or judicial body), in each case arising out of that third party claim, action, demand, lawsuit, or proceeding.

**17.2 Additional Remedies.** In addition to all other remedies available to MCE, if use of services or Deliverables under this Agreement or any Statement of Work is enjoined or injunction is threatened, Contractor, at its expense, will notify MCE and immediately (i) procure for MCE the right to continue using such services and Deliverables, or (ii) replace or modify such services and Deliverables so that they are noninfringing and useable to MCE's satisfaction. If Contractor does not comply with this Section 17.2, then in addition to any amounts reimbursed under this Section 17, Contractor will refund all amounts paid by MCE for infringing services and Deliverables and pay reasonable costs to transition Services to a new supplier.

### **18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### 19. **INVOICES; NOTICES:**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: R Systems International Limited





Address: C-40, Sector 59, Noida 201307 UP India

Email Address: [mandeep@rsystems.com](mailto:mandeep@rsystems.com)

Telephone No.: \_\_\_\_\_

#### 20. **ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:**

This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	<input checked="" type="checkbox"/>	<b><u>Check applicable Exhibits</u></b>	<b><u>CONTRACTOR'S INITIALS</u></b>	<b><u>MCE'S INITIALS</u></b>
<b><u>EXHIBIT A.</u></b>	<input checked="" type="checkbox"/>	<b>Form of Statement of Work</b>	<div>DS mS</div>	<div>DS DW</div> <div>DS </div>
<b><u>EXHIBIT B.</u></b>	<input checked="" type="checkbox"/>	<b>Fees and Payment</b>	<div>DS mS</div>	<div>DS DW</div> <div>DS </div>
<b><u>Schedule A.1</u></b>	<input checked="" type="checkbox"/>	<b>Statement of Work for Data Analytics Platform ("DAP")</b>	<div>DS mS</div>	<div>DS DW</div> <div>DS </div>
<b><u>Schedule A.2</u></b>	<input checked="" type="checkbox"/>	<b>Statement of Work for Customer Relationship Management ("CRM")</b>	<div>DS mS</div>	<div>DS DW</div> <div>DS </div>

**21. SEVERABILITY:**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. INDEPENDENT CONTRACTOR:**

Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

**23. TIME:**

Time is of the essence in this Agreement and each and all of its provisions.

**24. THIRD PARTY BENEFICIARIES:**

The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

**25. FURTHER ACTIONS:**

The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**26. PREPARATION OF AGREEMENT:**

This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

**27. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**28. CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY:**

**28.1** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL, OR OTHER DIRECT OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR LOST GOODWILL, WHETHER ARISING FROM CONTRACT OR NEGLIGENCE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**28.2** Notwithstanding anything contained under this Agreement, each Party's maximum aggregate liability for damages (including attorney's fees and any other costs and expenses related to the collection of such damages), shall be limited to the total fees paid by MCE to Contractor under this Agreement for each approved Statement of Work, for which damages are alleged within twelve (12) calendar months period prior to the action resulting in said damages.

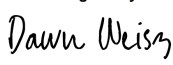
**28.3** The limitations in Sections 28.1 and 28.2 do not apply to Contractor's indemnification obligations; breach of confidentiality, privacy and security obligations; failure to comply with applicable laws as set forth in Section 5.3; or fraud, willful or intentional misconduct or gross negligence.

**29. SOLICITATION OF EMPLOYEES:**


During the term of this Agreement and continuing for two (2) years thereafter, both MCE and Contractor mutually agree not to hire, contract, or solicit the employment of any current or previous employee of either party who has been involved with this Agreement or performance hereunder, either indirectly or directly, unless a period of twelve (12) months has elapsed from the last date that such employee was employed by either MCE or Contractor as the case may be, without the prior written authorization of their respective companies, provided, however, that this Section 29 shall not restrict general advertisements of employment or the rights of any employee of one party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other party and under such circumstances, for the other party to hire such employee.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
  
By: \_\_\_\_\_  
A59878416EBC4F8...

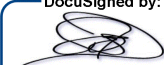
**CONTRACTOR:**

DocuSigned by:  
  
By: \_\_\_\_\_  
F50E6B593CD64FF...

Name: Dawn Weisz

Title: CEO

Date: 4/12/2021

By:   
Chairperson

Date: 4/13/2021

Name: mandeep sodhi

Title: COO

Date: 4/12/2021

**MODIFICATIONS TO STANDARD SHORT FORM MASTER SERVICES AGREEMENT**☒ **Standard Short Form Master Services Agreement Content Has Been Modified**

**List sections affected:** 2, 3, 5.1, 5.6, 5.10, 6, 7, 8, 10.3, 10.5, 10.6(b), 11, 12, 13, 15, 16 and 17; added section 5.2, 12.4, 17.2, 28, and 29

Approved by MCE Counsel:

DocuSigned by:  
  
0CC3FD724F79482...

Date: 4/9/2021

**Exhibit A**  
**Form of Statement of Work**

**Schedule A.\_\_\_\_**  
**Statement of Work for [Describe Work]**

This Schedule A.\_\_\_\_ is entered into on **[Date]** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and R SYSTEMS, INTERNATIONAL LIMITED, hereinafter referred to as "Contractor", dated **April 1, 2021** ("MSA").

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- [Describe work]

Attached as **Attachment A** is the technical scope of work for this request.

**Billing:**

Contractor shall bill upon completion of each milestone after MCE has accepted the deliverables within that milestone. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$[\_\_\_\_\_]** for the term of this Statement of Work. In no event shall the total cost to MCE for the services provided under all statements of work between Contractor and MCE exceed the contract amount set forth in Section 3 of the MSA.

**Term of Statement of Work:**

This Statement of Work shall commence on **April 1, 2021** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.\_\_\_\_ on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Contractor:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

Contractor will bill MCE on a time and materials basis based on the number of hours expended on the Project for the previous month according to the following rate schedule:

Salesforce Developer	\$34/hour
Senior Salesforce Developer	\$35/hour
BI Engineer	\$35/hour
Data Engineer	\$35/hour
Visualization Developer	\$35/hour
Onsite Salesforce Developer	\$110/hour
Solution Architect/PM	\$140/hour
Marketing Cloud Blended Support	\$75/hour

Contractor will provide monthly invoices with the following details:

- Approved Time Sheets
- Total Hours Spent by each member
- Project Deliverables achieved during each billing cycle.

Contractor will bill MCE based on the number of hours expended on the Project for the previous month, however MCE will not be obligated to pay the applicable fees unless and until MCE Manager of Technology and Analytics has reviewed and approved each detailed, monthly invoice.

In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of \$550,000** for the term of the Agreement.

**Statement of Work****Schedule A.1****Statement of Work for Data Analytics Platform ("DAP")**

This Schedule A.1 is entered into on **April 1, 2021** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and R SYSTEMS, INTERNATIONAL LIMITED, hereinafter referred to as "Contractor", dated **April 1, 2021** ("MSA").

The First Agreement between MCE and Contractor dated August 3, 2020 is terminated as of April 1, 2021.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 2 of Data Analytics Platform for MCE

Attached as **Attachment A** is the technical scope of work for this request. In the event there is any conflict between the Terms of this MSA and Attachment A regarding the services and the relationship between the Parties, the Terms of this MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**


Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$60,000** for the term of this Statement of Work. In no event shall the total cost to MCE for the services provided under all statements of work between Contractor and MCE exceed the contract amount set forth in Section 3 of the MSA.

**Term of Statement of Work:**


This Statement of Work shall commence on **April 1, 2021** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.1 on the date first above written.

**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
  
By: A59878416EBC4F8...  
Title: CEO  
Date: 4/12/2021

**Contractor:**

DocuSigned by:  
  
By: F50E6B593ED64FF...  
Name: COO  
Date: 4/12/2021



**Statement of Work****Schedule A.2****Statement of Work for Customer Relationship Management ("CRM")**

This Schedule A.2 is entered into on **April 1, 2021** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and R Systems, International Limited, hereinafter referred to as "Contractor," dated **April 1, 2021** ("MSA").

The Second Agreement between MCE and Contractor dated November 30, 2020 is terminated as of April 1, 2021.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 2 of CRM System

Attached as **Attachment B** is the technical scope of work for this request. In the event there is any conflict between the Terms of this MSA and Attachment B regarding the services and the relationship between the Parties, the Terms of this MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**


Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$150,000** for the term of this Statement of Work.

**Term of Statement of Work:**

This Statement of Work shall commence on **April 1, 2021** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.2 on the date first above written.


**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
  
By: A59878416EBG4F8...

Title: CEO


Date: 4/12/2021

**Contractor:**

DocuSigned by:  
  
By: F58E6B5936D64FF...

Name: COO

Date: 4/12/2021

DocuSigned by:  
  
8ABF434893064F1...

Chair Technical Committee

4/13/2021

Attachment A

Technical Scope of Work for Data Analytics Platform Phase 2

1.1 Major milestones for the Phase-2

1. Data Ingestion
- a. Customer data ingestion

b. SMD Usage data ingestion (Share my data from PG&E)

c. Billing data ingestion

d. PG&E Blue bills (Monthly Energy Statements)

e. Gas Data ingestion and processing

f. Spatial dataset ingestion

g. BI Environment creation and report generation

h. Ad-hoc data ingestion
2. ETL data pipeline
- a. Interval/Usage data Transformation logic (3 days window for Usage data)

b. XML Data modeling

c. Create the ETL job using PySpark.

d. Test the ETL job end to end.

e. The ETL Data pipeline will
3. Azure Databricks (Provision on demand)
- a. Analyze Cost effectiveness of Azure Databricks (Provision on demand)

b. Design the flow using ADF to launch Azure Data Bricks on demand and shut it down when pipeline finished running.This will save the compute cost.
4. Data warehouse (Synapse)
- a. Create tables and views for the folloing data:

i. Customer data

ii. SMD date

iii. Billing data

iv. PG&E Blue bills

b. Utilize Azure Synapse as serverless service to usitlize pay-per-use.
5. Job Monitoring
- a. Robust metadata and auditing log tables.

b. Monitoring design for both Customer and Usage Job.

c. The metrics could be but not limited to:

i. How many jobs ran in a time window?

ii. Job Status : Which Job failed or succeeded.

iii. ETL job execution time and detail.

Resource plan

Not all the team member will be working full time except the Azure Engineers.

File Type	Task Type	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20
Customer Master - 401	Development																				
	Unit and Integration Testing																				
	Name parsing																				
SMD	Development																				
	Unit and Integration Testing																				
Billing Data	Development																				
	Unit and Integration Testing																				
PG&E Blue bills																					
UAT and Prod support	Support																				

2.1 R Systems Resources

The primary responsibilities of the roles are described herein, but it is also understood that the individuals will not be limited to the stated responsibilities but will be required to take up other appropriate tasks and responsibilities as the project demands.

Role	Role Description	Responsibilities
Data Engineer	Will have 5-10 years of experience in working with ETL data pipelines on-prem and cloud. 2+ years of experience working with Azure data platform including ADLS and Azure Data warehouse.	Configure, install, develop, deploy and schedule Data pipeline in-line with designed Azure architecture and infrastructure. Job design review sessions and performance recommendations. Also, Perform ETL and do data validation

<b>Project Manager</b>	10+ years of experience in project management for ETL and Data projects.	Manage and guide data to day activities of the project and give status to the Product owner.
------------------------	--	--

## 2.2 Assumption

---

- Adding/removing resource will require 2 weeks of notice period.
- For Customer 4013
  - Files will be copied from PG&E server only
  - There are approx. 15 Reference tables
  - Design will be provided by client
- SMD
  - Design will be provided by client

## 3.1 Team Composition

---

Here is the proposed team composition:

Team Member	Number of Members
Azure Data Engineer	2
Project Manager	1

## 4.1 Effort for Phase-2

---

**It will be 20 weeks of effort for the phase. And, this is T&M based project.**

## 5.1 Cost

---

Includes Phase-2 design and implementation.

Offshore **20 weeks** engagement

Name	Hours	Total
Data Engineer 1	40 hours/week	\$35
Data Engineer 2	20 hours/week	\$35
BI Engineer	20 hours/week	\$35

Rough estimate of total cost in 26 weeks would be:

80 hours x 40 hrs./week x 20 weeks

**= \$56,000**

Note: The total cost of the project will not exceed more than \$56,000, assuming there is no change request. Any change request will be approved by MCE and R Systems project manager.

**Phase-2 will be T&M based project. As per estimation, this phase will be of 20 weeks.**

### Add-on resources

In case more resources are needed besides two data engineers and one project manager, those can be added as need basis as mentioned in the rate card below:

Resource	Hourly rate
Data Engineer	\$35
Visualization Developer	\$35

**Payment Terms**

R Systems will invoice MCE for all time expended at the agreed upon hourly rate and plus actual travel and living expenses. Any travel and/or living expenses needed by Contractor to perform the Services herein require MCE's approval prior to the expense being incurred. Client will be billed monthly.

**5.1 Change Request Form**

---

CHANGE REQUEST FORM		
<b>Change Description</b>		
<b>Project Name:</b> MCE DAP	<b>Change Name:</b>	<b>Number:</b>
<b>Requested By:</b>	<b>Contact:</b>	<b>Date:</b>
<b>Description of Change:</b>		
<b>Reason for Change:</b>		
<b>Priority [Circle One]:</b> 1. High 2. Medium 3. Low		
<b>Impact on Deliverables:</b>		
<b>Impact of Not Responding to Change (and Reason Why):</b>		
<b>Date Needed:</b>	<b>Approval of Request:</b>	<b>Date:</b>
<b>Change Impact</b>		
<b>Tasks/Scope Affected:</b>		
<b>Cost Evaluation:</b>		
<b>Risk Evaluation:</b>		
<b>Additional Resources:</b>		
<b>Duration:</b>		
<b>Impact on Deadline:</b>		
<b>Comments:</b>		
<b>Sign Offs</b>		
<b>[Circle One]:</b> 1. Accepted 2. Deferred 3. Rejected 4. More Info Requested		
<b>Comments:</b>		
<b>Project Manager Signature:</b>	<b>Date:</b>	
<b>Decision Maker Signature:</b>	<b>Date:</b>	

## **Attachment B**

### **Technical Scope of Work for Customer Relationship Management Phase 2**

#### **1.1 Project Lifecycle**

---

This Project will be implemented in concurrence with Agile methodology framework.

##### **1.1.1 Project Standard Operating Procedures**

---

The following section will define roles and responsibilities of Implementer for the Project

- We will create user stories based on the requirements shared by MCE
- We will follow Source Code versioning standards as defined by MCE
- Our team will be responsible for Code reviews before deployments
- We will be responsible for Solution Design, development activities, unit testing
- We will ensure adherence to Salesforce coding standards and subsequent coding best practices
- Deployment to be undertaken by the Implementer along with publishing a consolidated list of deployment artefacts at end of each sprint
- MCE Business Team to provide written user acceptance testing sign-off prior to Production deployment
- We will provide following set of documents at the time of Project completion including but not limited to:
  - Technical Implementation details
  - Architectural Limitations details (if any)
  - Deployment Document
  - Change Log
- We will provide 2 weeks of Post Go Live warranty support
- MCE to provide Project Completion Certificate Post Go Live
- We will provide user training as required by MCE

##### **1.1.2 Quality Assurance Scope**

---

The responsibility for Quality Assurance will be with MCE which should include but not limited to:

- Validate and sign off acceptance criteria for each story
- Smoke and Sanity checks at end of each deployment cycle
- Regression testing at point of delivery of each sprint increment
- Establish a bug tracking interface and turnaround cadence
- Publish a fully detailed test case repository on any tool as chosen by MCE
- Publish a passing percentage report for each sprint increment

#### **1.2 General Scope and Deliverable**

---

##### **CRM Setup & Security**

The Salesforce setup will encompass the following artifacts:

##### **d. User Profiles & Permission Sets**

Profiles in Salesforce defines the tasks an authorized user that can perform in the system. It also controls what data they can or cannot see. Permission Sets open additional access that is required by only a specific sub-set of users underneath a common / different profile(s).

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

##### **e. User Roles**

The Implementer will modify the user role hierarchy structure in Salesforce, as needed. Role Hierarchy can be used with Organization-Wide Security settings to determine the levels of access that users have to your CRM org's data. Roles within the hierarchy affect access on key components such as records and reports.

##### **f. User Credentials**

The Implementer will modify each user to unique username, password, and Profile, as needed. This deliverable will include creating Salesforce Users for identified MCE Resources.

#### g. Organization-Wide Security

The org-wide sharing defaults will set the baseline access for records. This allows controlling visibility of record rows based on Record Ownership. It allows controlling access to an Object's records by setting them as Full control to Owner, Read Only for Everyone except Owner, Read Write for Everyone, etc. It also allows opening record access to Salesforce users above the Owner in the Role Hierarchy.

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

#### **Powerpath Instance Migration To CRM**

- R Systems will continue the work started in Phase 1 to complete the integration of POWERPATH into the CRM, functionality and data migration.
- Review POWERPATH Architecture for future enhancements to work seamlessly with other changes. This involves analysis of how POWERPATH is setup and capturing / identifying the Data Points captured by Aiqueous. These will be documented for replication in CRM system
- Production Migration & Go-Live plan and documentation

#### **SalesForce Marketing Cloud Integration**

As part of this project, the Implementer will perform real time integration of Marketing Cloud with Salesforce to allow it to reference the data stored natively in Salesforce objects of Accounts, Leads, Contacts and other Custom objects for running the Campaigns. The integration will be done using third party integration tools that MCE will procure.

R Systems will implement the following Marketing Cloud functionality

- Campaigns & Metrics
- Custom Fields – *Birthdays/Anniversaries & Bounce Data/Reasons*
- Leads & Contacts
- Accounts & Person Accounts
- Custom Objects

The implementation will include the following Marketing Cloud components:

- Journey Builder
- Advertising Studio Professional
- Email Studio
- Mobile Studio
- Datorama Reports

#### **Document Deliverables & User Trainings**

The Implementer will provide the following documentation as part of this implementations:

- Business Requirement Document  
This will document the User Stories for each Major Deliverable.
- Solution Design Document  
This document will include:
  - Technical Implementation
  - Architectural Limitations
- Deployment Document  
This document will include the Pre and Post Deployment steps to take for successfully deploy the changes to the Production CRM Environment.

The Implementer will also conduct the following Trainings for MCE Administrators:

- Managing the Salesforce Environment
- Onboarding and Offboarding Salesforce Users
- Setup Salesforce Surveys
- Setup Formstack forms

The Implementer will conduct the following Trainings for identified MCE Users to help them understand and familiarize themselves with the system. MCE will be responsible to provide the list of users

### 1.3 Specific Technical Deliverables

---

Implementer will provide the following deliverables in Sprints:

- Top 250 Customers: Modify current implementation to use actual energy usage as a criterion for this report
- Train users on all new features and provide documentation for those features as they are implemented during sprints
- Data Migration from Calpine CRM
  - Identify data that is currently managed and hosted by Calpine. At a minimum, at this time we know that this will include:
    - Data that is one-to-one with the Account and/or Service Agreement, such as MCE Product and Opt-In Date
    - Repeating related data, such as Activities, Tasks, Notes, Contacts
  - Implement MCE CRM architecture
  - Identify statuses and fields that needs to be changed
  - Extract Calpine data
    - Product Opt-in and Opt-Out dates
    - Contacts that are only in the Calpine CRM
- Migrate from 4013 Customer data in the MCE data warehouse as needed, to support new and modified functionality
- Migrate and integrate customer usage data
- Migrate or link to data specific to customer billing, including pdfs of customer bills
- When needed, restructure data structure in the CRM architecture to support new and modified functionality, to include remigration of data if needed
- Up to 10 Dashboards with Metrics (only based on available data in MCE CRM and within CRM limits)
- Up to 15 reports (only based on available data in MCE CRM and within CRM limits)
- Set up complex Roles and permissions to support different groups of users having different data access needs, including within departments, as needed
- Set up new Account Record types, with different data sets within objects, as needed
- PMP Migration to Production and Integration to other teams
- Migrate activity data for all Accounts
- Create Custom Component to show more than 8 columns for the historical data
- Field level history tracking for beyond 18 months of history for other objects
- Marketing Cloud integration to CRM (Service Cloud Setup to Marketing Cloud)
- Bidirectional updates between MCE's CRM and MCE's data warehouse (Leveraging middleware tool like Mulesoft/Boomi)
- Setup customer energy profiles
- R Systems will design a process by which new contacts that are communicated to the CRM through automated means (i.e. Formstack) do not directly create Contact records, but rather are set to be processed by MCE to determine if these are new or existing Contacts.
- Modify current DW to CRM integration to account for the correct interpretations of "Closed" accounts
- Analyze and implement a method to make visible to the end-user customers' changes for Opt-In, Opt-out, Opt-up, and Opt-down

### 1.4 Deployment

---

For Phase 2 the following environment will be provisioned:

#### **PROD ENVIRONMENT**

The development will start in a sandbox environment and once the user acceptance training ("UAT") is complete, all changes will be pushed into production.

#### **DEV ENVIRONMENT**

Each developer will have their own dev environment if needed and push changes daily to fullcopy sandbox.

### 1.4.1 Discovery Process

---

For each Discovery Phase R Systems will engage with a stakeholder identified by MCE. This engagement will be over daily scheduled calls between the MCE Stakeholder and R Systems at a mutually acceptable time.

MCE Stakeholders will be responsible for sharing the Business processes and Security considerations required. As part of the discussions, R Systems will document and prepare:

- a) A System Requirement Specification Document (SRS) capturing the requested Business processes and Security considerations for review and approval by MCE stakeholders. This SRS will be considered as an Epic.
- b) Individual user stories under the Epic by breaking the SRS into small, manageable, and trackable development pieces. Each User Story will include but not be limited to:
  - a. Schema Changes (Custom Objects & Fields)
  - b. Display Layout Changes (Page Layouts)
  - c. Security Changes (Field Level Security, Organization Wide Sharing Settings, Profile Access, Sharing Rules)
  - d. Business Processes (Validation Rules, Automations)
  - e. Acceptance Criteria which will define Definition of Done (DoD) which will be pre-signed off by the MCE Stakeholder to freeze the requirement of each ticket.
  - f. Each story will be recorded as a project backlog.
  - g. These stories will be planned for each Sprint Milestone as part of the details outlined in Section **Error! Reference source not found.**

R Systems will be documenting the above in a Tool provided and approved by MCE. MCE stakeholder will be responsible for signing off on the Acceptance Criteria for each story documented in the tool (Jira / Asana / Trello / Any other tool proposed by MCE).

### 1.4.2 Quality Assurance Process

---

The Quality Assurance process will be MCE's Responsibility. The scope of this process will include details laid out under Section 1.1.2 Quality Assurance Scope.

The following process will be followed per Sprint:

- a) R Systems will develop individual user stories defined in the Discovery Phase in Developer Sandboxes and perform unit testing to ensure that the stories meet the defined Acceptance Criteria.
- b) R Systems will then deploy changes for individual user stories to QA Sandbox thereby making these changes available for MCE's QA team to validate.
- c) MCE's QA team will test these deployed user stories as per the QA scope and ensure that all the parameters laid out under the Acceptance criteria are met.
- d) In case any deviation is identified, QA Team will raise appropriate Bug / Enhancement Tickets for the Development team to fix either as part of the current Sprint or as part of the upcoming Sprint.
- e) Once all laid out parameters for the story are met, the QA Team will be responsible to mark the Story as QA Complete
- f) Any Change Requests identified during QA Testing, will be logged as a separate User Story (Enhancement), and will be placed in the Project Backlog. R Systems will be responsible to perform Effort estimations to evaluate if it can be absorbed as part of this project's scope or taken up as a future project.

### 1.4.3 Project Planning & Coordination

---

At project kick-off, R Systems will engage all the stakeholders responsible for implementation of the project. The stakeholders including MCE's designee will be involved in the initial project planning and shall be kept in consultation and with information while monitoring the progress and refining the plans and documents across different phases in consultation. The R Systems Project Manager will be responsible for managing the activities identified during Discovery and support R Systems in the execution of the project and for coordinating the response to the queries raised by R Systems during the project.

### 1.4.4 Project Tracking & Reporting

---

Following communication mechanism will be used for regular and effective tracking of project progress.

- a) Daily Scrum Calls  
R Systems team will conduct a daily scrum call and involve respective MCE business stakeholders to resolve impediments (if any) on as needed basis.
- b) Weekly & Monthly Status Report

R Systems team will publish a weekly & a monthly status report to all stakeholders from R Systems and MCE providing the following details:



- Dashboard of progress against planned activities with original schedule, overruns, reasons for overruns and revised schedule (if required)
- Milestones achieved in previous week, with plan for the next week
- Problems encountered, corrective actions taken, and outstanding problems
- Change request tracking, risk identification, analysis, mitigation and contingencies

#### 1.4.5 User Acceptance Testing

---

The testing will be based on an acceptance test plan, prepared by the MCE Technology and Analytics team and other designated members. The prime objective of user acceptance testing is to allow the users to test the complete Request Tracking Systems (RTS) built on Salesforce ensure that it satisfies the business objectives and requirements that were originally mentioned in the RFO and validated later during phase one with the users. The users are responsible for testing the application; the role of R Systems' team is to support. Before this test can begin, the following activities would need to be completed beforehand:

- Conversion & migration of existing data to new system that serves two purposes, viz. validating data conversion and testing via real data
- Creation of user acceptance test (UAT) case
- Use of bug tracking system to log and monitor identified bugs. Test cases would be repeated till the program successfully passes the test cases
- Creation of Test Report and a joint review meet by R Systems, at the conclusion of UAT phase, to discuss the UAT Report
- All bugs will be resolved prior to UAT completion. Successful completion of a UAT marks acceptance of the Request Tracking system, and any other new implementations

#### 1.4.6 Knowledge Transfer & Training

---

For all 14 weeks of the R Systems Project Manager along with the team will perform a knowledge transfer to MCE. The knowledge transfer will involve:

- Delivering a written comprehensive plan that outlines all elements of the knowledge transfer
- Providing MCE representatives access to all development, testing, staging, and other environments needed to support the Salesforce enhancements
- Providing MCE IT Staff training on Salesforce enhancements at the conclusion of each iteration cycle and no less than one training session a month.
- Providing execution and control status of knowledge transfer at the end of each development sprint cycle/iteration. As requested by MCE Manager of Technology and Analytics, R Systems will provide execution and control status of knowledge transfer in weekly status reports
- Delivering a written report along with a presentation to MCE on lessons learned on the knowledge transfer process
- Ensuring a successful knowledge transfer to MCE at the end of each iteration. Successful completion of knowledge transfer requires a formal MCE acceptance in writing. A successful knowledge transfer includes delivery of desk procedures, user guides on software updates, maintenance, and operations

#### 1.5 High Level Project Schedule

---

The CRM implementation will be delivered in 14 Weeks, with five sprints where each sprint will focus on delivering a predefined and agreed set of features. Each sprint will be of Two weeks duration. The sprint will include:

- |                                |                                |
|--------------------------------|--------------------------------|
| • Story Boarding/Task Planning | • Solution/Feature Development |
| • Test Deployment              | • User Demo                    |

#### 1.6 Assumptions

---

- MCE will assign appropriate contact(s) to participate on-need basis. The contact(s) should be able to understand the project purpose, make decisions related to requirements, provide & facilitate access to necessary individuals & information within MCE, and to approve final deliverables
- MCE will provide necessary and sufficient access to software applications and network for this effort
- The Solution is based on the provided Requirement document
- As part of the best practice recommended by Salesforce, Implementer will be leveraging Out of the Box (OOB) functionality
- Any customization needs to be approved by both MCE's Manager of Technology and Analytics and R Systems.

- The Solution Design consideration should be 90% OOB and only 10% customization. Any deviation should require proper discussion, impacts, and email approval from MCE.
- Test Coverage for customization should be minimum 90%
- All User stories should be captured in JIRA
- Implementation should be by using Agile Methodology
- Complete implementation will happen by using Lightning Web Component (LWC)
- Following Sandbox, will be provided for implementation
  - 1 (Partial Copy) Sandbox will be available for DEV
  - 1 (Partial Copy) Sandbox will be available for QA
  - 1 (Full Copy Sandbox) will be available for UAT.

**Statement of Work****Schedule A.3****Statement of Work for Data Analytics Platform ("DAP")**

This Schedule A.3 is entered into as of **August 9, 2021** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and R SYSTEMS, INTERNATIONAL LIMITED, hereinafter referred to as "Contractor", dated **April 9, 2021** ("MSA").

MCE and Contractor hereby agree that Schedule A.1 (regarding phase 2 of Data Analytics Platform for MCE) is terminated as of August 8, 2021.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 3 of Data Analytics Platform for MCE

Attached as **Attachment C** is the technical scope of work for this request. In the event there is any conflict between the Terms of this MSA and Attachment C regarding the services and the relationship between the Parties, the Terms of this MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**

Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$65,000** for the term of this Statement of Work. In no event shall the total cost to MCE for the services provided under all statements of work between Contractor and MCE exceed the contract amount set forth in Section 3 of the MSA.

**Term of Statement of Work:**

This Statement of Work shall commence on **August 9, 2021** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.3 on the date first above written.

**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
By: *Picken Kusanjiran*  
ACC4B8FA2E834F3...  
Title: COO  
Date: 8/6/2021

**Contractor:**

DocuSigned by:  
By: *Mandeep Sodhi*  
41823A26DE73449...  
Name: Mandeep Sodhi  
Date: 8/6/2021

**Statement of Work****Schedule A.4****Statement of Work for Customer Relationship Management ("CRM")**

This Schedule A.4 is entered into as of **August 9, 2021** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and R Systems, International Limited, hereinafter referred to as "Contractor," dated **April 9, 2021** ("MSA").

MCE and Contractor hereby agree that Schedule A.2 (regarding phase 2 of CRM System) is terminated as of August 8, 2021.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 3 of CRM System

Attached as **Attachment D** is the technical scope of work for this request. In the event there is any conflict between the Terms of this MSA and Attachment D regarding the services and the relationship between the Parties, the Terms of this MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**

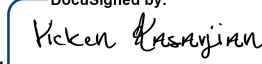
Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$207,000** for the term of this Statement of Work.

**Term of Statement of Work:**

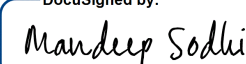
This Statement of Work shall commence on **August 9, 2021** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.4 on the date first above written.

**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
  
By: ACC4B8FA2E834F3...  
Title: COO  
Date: 8/6/2021

**Contractor:**

DocuSigned by:  
  
By: 41823A26DE73449...  
Name: Mandeep Sodhi  
Date: 8/6/2021

**Attachment C**  
**Technical Scope of Work for Data Analytics Platform Phase 3**

## 1.1 Major milestones for the Phase-3 (Continuation from Phase 2)

### 1. Data Ingestion

- a. Customer data ingestion [CRCR files]
- b. SMD Usage data ingestion [Share my data from PG&E]
- c. Billing data ingestion [Invoice data]
- d. PG&E Blue bills (Monthly Energy Statements)
- e. Gas Data ingestion and processing
- f. Spatial dataset ingestion Ad-hoc data ingestion

### 2. ETL data pipeline

- a. Interval/Usage data Transformation logic (3 days window for Usage data)
- b. XML Data modeling
- c. Create the ETL job using PySpark.
- d. Test the ETL job end to end.

### 3. Azure Databricks (Provision on demand)

- a. Analyze Cost effectiveness of Azure Databricks (Provision on demand)
- b. Productionize and automate all the data pipelines.

### 4. Data warehouse (Synapse)

- a. Create tables and views for the following data:
  - i. Customer data
  - ii. SMD data
  - iii. Billing data
  - iv. PG&E Blue bills
- b. Utilize Azure Synapse as serverless service to utilize pay-per-use.

### 5. Reporting

- a. BI Environment creation and report generation. Approx. 20+ reports.

### 6. CRM support

- a. Data engineering team will support CRM team for data engineering work in Azure.

### 7. Job Monitoring

- a. Robust metadata and auditing log tables.
- b. Monitoring design for both Customer and Usage Job.
- c. The metrics could be but not limited to:
  - i. How many jobs ran in a time window?
  - ii. Job Status : Which Job failed or succeeded.
  - iii. ETL job execution time and detail.

## Resource plan

Not all the team member will be working full time except the Azure Engineers.

File Type	Task Type	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20
Customer Master - 401	Development																				
	Unit and Integration Testing																				
	Name parsing																				
SMD	Development																				
	Unit and Integration Testing																				
Billing Data	Development																				
	Unit and Integration Testing																				
PG&E Blue bills	Development																				
UAT and Prod support	Support																				
	R-1																				
	R-2																				

## 2.1 R Systems Resources

---

The primary responsibilities of the roles are described herein, but it is also understood that the individuals will not be limited to the stated responsibilities but will be required to take up other appropriate tasks and responsibilities as the project demands.

Role	Role Description	Responsibilities
<b>Data Engineer</b>	Will have 5-10 years of experience in working with ETL data pipelines on-prem and cloud. 2+ years of experience working with Azure data platform including ADLS and Azure Data warehouse.	Configure, install, develop, deploy and schedule Data pipeline in-line with designed Azure architecture and infrastructure. Job design review sessions and performance recommendations. Also, Perform ETL and do data validation
<b>BI Engineer</b>	5-10 years of experience in data visualization	Designing, developing and maintaining business intelligence reports

## 2.2 Assumption

---

- Adding/removing resource will require 2 weeks of notice period.
- For Customer 4013
  - Files will be copied from PG&E server only
  - There are approx. 15 Reference tables
  - Design will be provided by client
- SMD
  - Design will be provided by client

## 3.1 Team Composition

---

Here is the proposed team composition:

Team Member	Number of Members
Data Engineer	2
BI Engineer	1

## 4.1 Effort for Phase-3

---

**It will be 20 weeks of effort for the phase. And, this is T&M based project.**

## 5.1 Cost

---

Includes Phase-3 design and implementation.

**Offshore 20 weeks engagement**

<b>Name</b>	<b>Hours</b>	<b>Total</b>
Data Engineer 1	40 hours/week	\$35
Data Engineer 2	20 hours/week	\$35
BI Engineer	20 hours/week	\$35

Rough estimate of total cost in 20 weeks would be:  
 80 hours (40 hrs./week) x \$35 x 20 weeks  
 = **\$56,000**

Note: The total cost of the project will not exceed more than \$65,000, assuming there is no change request. Any change request will be approved by MCE and R Systems project manager.

**Phase-3 will be T&M based project. As per estimation, this phase will be of 20 weeks.**

**Add-on resources**

In case more resources are needed besides two data engineers and one BI engineer, those can be added as need basis as mentioned in the rate card below:

<b>Resource</b>	<b>Hourly rate</b>
Data Engineer	\$35
Visualization Developer	\$35

**Payment Terms**

R Systems will invoice MCE for all time expended in at the agreed upon hourly rate and plus actual travel and living expenses. Any travel needed by Contractor to perform the Services herein require MCE's approval prior to the expense being incurred. MCE will be billed monthly.

**5.1 Change Request Form****CHANGE REQUEST FORM**

Change Description		
<b>Project Name:</b> MCE DAP	<b>Change Name:</b>	<b>Number:</b>
<b>Requested By:</b>	<b>Contact:</b>	<b>Date:</b>
<b>Description of Change:</b>		
<b>Reason for Change:</b>		
<b>Priority [Circle One]:</b> 1. High 2. Medium 3. Low		
<b>Impact on Deliverables:</b>		
<b>Impact of Not Responding to Change (and Reason Why):</b>		
<b>Date Needed:</b>	<b>Approval of Request:</b>	<b>Date:</b>

Change Impact	
Tasks/Scope Affected:	
Cost Evaluation:	
Risk Evaluation:	
Additional Resources:	
Duration:	
Impact on Deadline:	
Comments:	

Sign Offs	
[Circle One]: 1. Accepted 2. Deferred 3. Rejected 4. More Info Requested	
Comments:	
Project Manager Signature:	Date:
Decision Maker Signature:	Date:



## **Attachment D**

### **Technical Scope of Work for Customer Relationship Management Phase 3**

Contractor will hereinafter be referred to as “Implementer”, “R Systems”, “our” and/or “we” and MCE will hereinafter be referred to as “User”, “you” and/or “your”.

#### **1.1 Project Lifecycle**

---

This Project will be implemented in concurrence with Agile methodology framework.

##### **1.1.1 Project Standard Operating Procedures**

---

The following section will define roles and responsibilities of Implementer for the Project

- We will create user stories based on the requirements shared by MCE
- We will follow Source Code versioning standards as defined by MCE
- Our team will be responsible for Code reviews before deployments
- We will be responsible for Solution Design, development activities, unit testing
- We will ensure adherence to Salesforce coding standards and subsequent coding best practices
- Deployment to be undertaken by the Implementer along with publishing a consolidated list of deployment artefacts at end of each sprint
- MCE Business Team to provide written user acceptance testing sign-off prior to Production deployment
- We will provide following set of documents at the time of Project completion including but not limited to:
  - Technical Implementation details
  - Architectural Limitations details (if any)
  - Deployment Document
  - Change Log
- We will provide 2 weeks of Post Go Live warranty support
- MCE to provide Project Completion Certificate Post Go Live
- We will provide user training as required by MCE

##### **1.1.2 Quality Assurance Scope**

---

The responsibility for Quality Assurance will be with MCE which should include but not limited to:

- Validate and sign off acceptance criteria for each story
- Smoke and Sanity checks at end of each deployment cycle
- Regression testing at point of delivery of each sprint increment
- Establish a bug tracking interface and turnaround cadence
- Publish a fully detailed test case repository on any tool as chosen by MCE
- Publish a passing percentage report for each sprint increment

#### **1.2 General Scope and Deliverable**

---

##### **CRM Setup & Security**

The Salesforce setup will encompass the following artifacts:

##### **d. User Profiles & Permission Sets**

Profiles in Salesforce defines the tasks an authorized user that can perform in the system. It also controls what data they can or cannot see. Permission Sets open additional access that is required by only a specific sub-set of users underneath a common / different profile(s).

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

#### e. User Roles

The Implementer will modify the user role hierarchy structure in Salesforce, as needed. Role Hierarchy can be used with Organization-Wide Security settings to determine the levels of access that users have to your CRM org's data. Roles within the hierarchy affect access on key components such as records and reports.

#### f. User Credentials

The Implementer will modify each user to unique username, password, and Profile, as needed. This deliverable will include creating Salesforce Users for identified MCE Resources.

#### g. Organization-Wide Security

The org-wide sharing defaults will set the baseline access for records. This allows controlling visibility of record rows based on Record Ownership. It allows controlling access to an Object's records by setting them as Full control to Owner, Read Only for Everyone except Owner, Read Write for Everyone, etc. It also allows opening record access to Salesforce users above the Owner in the Role Hierarchy.

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

### **Document Deliverables & User Trainings**

The Implementer will work with MCE staff to support the preparation of the following:

- Business Requirement Document - This will document the User Stories for each Major Deliverable.

The Implementer will provide the following:

- Solution Design Document - This document will include:
  - Technical Implementation
  - Architectural Limitations
- Deployment Document - This document will include the Pre and Post Deployment steps to take for successfully deploying the changes to the Production CRM Environment.

The Implementer will also conduct the following Trainings for MCE Administrators:

- Managing the Salesforce Environment
- Onboarding and Offboarding Salesforce Users

The Implementer will conduct the following Trainings for identified MCE users to help them understand and familiarize themselves with the system. MCE will be responsible for providing the list of users.

### **1.3 Specific Technical Deliverables**

Implementer will provide the following deliverables in Sprints, based upon priority from top to bottom:

- Complete Phase 2 items:
  - Integration of historical customer information from the PG&E 4013 and Calpine Weekly Snapshot file
  - Automation of weekly data refreshes from the data warehouse into the CRM
  - Training documentation and update design documents
  - Provide support and maintenance for existing CRM functionality
- Eliminate all silos of Accounts and Contacts:
  - Account/SA/ Contacts, both Customer and Project based, will be available for all staff to view and manage
  - Below are the identified tasks:
    - Discovery
    - Design and development
    - Checkpoint for possible timeline realignment based upon prior steps
    - QA and implementation
    - Documentation and training

- Case Management
  - Discovery
  - Design and development
    - Salesforce out-of-box
    - All agreed upon required customizations (after review and evaluation)
    - Including reports
  - Checkpoint for possible timeline realignment based upon prior steps
  - QA and implementation
  - Documentation and training
- Program Management
  - Program implementation for the following programs:
    - Energy Storage Program
    - GHHI
    - LIFT
    - Energy Efficiency Market
    - Peak Flex Market
    - Green Access
  - For all programs, below are the identified tasks:
    - Discovery
    - Design and development
      - All required customizations
    - Checkpoint for possible timeline realignment based upon prior steps
    - QA and implementation
    - Documentation and training
- Updated Primary account designations
  - Complete Account Type and Account Contact Type designations
  - Including beyond the Top 250
  - Below are the identified tasks:
    - Discovery
    - Design and development
    - QA and implementation
    - Documentation and training
- Data migration of Contacts for beyond Top 250 Customers
  - Below are the identified tasks:
    - Discovery
    - Design and development
    - Checkpoint for possible timeline realignment based upon prior steps
    - QA and implementation
    - Documentation and training
- Data migration of Activities from internal MCE spreadsheet, for beyond Top 250 Customers
  - Below are the identified tasks:
    - Discovery
    - Design and development
    - Checkpoint for possible timeline realignment based upon prior steps
    - QA and implementation
    - Documentation and training
- Train users on all new features and provide documentation for those features as they are implemented during sprints
- To prepare for important features needed in the future Phase 4, begin work on specifications and analysis for the following:
  - Migration of historical Activities from Calpine into the CRM (for tentative delivery in Q1 2022)
  - Expanded Billing Management to include PG&E Blue Bills (for tentative delivery in Q1 2022)
  - Bi-directional Sync between CRM and Data Warehouse (for tentative delivery in Q2 2022)

## 1.4 Deployment

---

For Phase 3 the following environment will be provisioned:

### **Prod Environment**

The development will start in a sandbox environment and once the user acceptance training ("UAT") is complete, all changes will be pushed into production.

### **DEV ENVIRONMENT**

Each developer will have their own dev environment if needed and push changes daily to fullcopy sandbox.

### 1.4.1 Discovery Process

---

For each Discovery Phase R Systems will engage with a stakeholder identified by MCE. This engagement will be over daily scheduled calls between the MCE Stakeholder and R Systems at a mutually acceptable time.

MCE Stakeholders will be responsible for sharing the Business processes and Security considerations required. As part of the discussions, R Systems will document and prepare:

- a) A System Requirement Specification Document (SRS) capturing the requested Business processes and Security considerations for review and approval by MCE stakeholders. This SRS will be considered as an Epic.
- b) Individual user stories under the Epic by breaking the SRS into small, manageable, and trackable development pieces. Each User Story will include but not be limited to:
  - a. Schema Changes (Custom Objects & Fields)
  - b. Display Layout Changes (Page Layouts)
  - c. Security Changes (Field Level Security, Organization Wide Sharing Settings, Profile Access, Sharing Rules)
  - d. Business Processes (Validation Rules, Automations)
  - e. Acceptance Criteria which will define Definition of Done (DoD) which will be pre-signed off by the MCE Stakeholder to freeze the requirement of each ticket.
  - f. Each story will be recorded as a project backlog.
  - g. These stories will be planned for each Sprint Milestone as part of the details outlined in Section **Error! Reference source not found. Error! Reference source not found.**

R Systems will be documenting the above in a Tool provided and approved by MCE. MCE stakeholder will be responsible for signing off on the Acceptance Criteria for each story documented in the tool (Jira / Asana / Trello / Any other tool proposed by MCE).

### 1.4.2 Quality Assurance Process

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The Quality Assurance process will be MCE's Responsibility. The scope of this process will include details laid out under Section 1.1.2 Quality Assurance Scope.

The following process will be followed per Sprint:

- a) R Systems will develop individual user stories defined in the Discovery Phase in Developer Sandboxes and perform unit testing to ensure that the stories meet the defined Acceptance Criteria.
- b) R Systems will then deploy changes for individual user stories to QA Sandbox thereby making these changes available for MCE's QA team to validate.
- c) MCE's QA team will test these deployed user stories as per the QA scope and ensure that all the parameters laid out under the Acceptance criteria are met.
- d) In case any deviation is identified, QA Team will raise appropriate Bug / Enhancement Tickets for the Development team to fix either as part of the current Sprint or as part of the upcoming Sprint.
- e) Once all laid out parameters for the story are met, the QA Team will be responsible to mark the Story as QA Complete
- f) Any Change Requests identified during QA Testing, will be logged as a separate User Story (Enhancement), and will be placed in the Project Backlog. R Systems will be responsible to perform Effort estimations to evaluate if it can be absorbed as part of this project's scope or taken up as a future project.

### **1.4.3 Project Planning & Coordination**

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At project kick-off, R Systems will engage all the stakeholders responsible for implementation of the project. The stakeholders including MCE's designee will be involved in the initial project planning and shall be kept in consultation and with information while monitoring the progress and refining the plans and documents across different phases in consultation. The R Systems Project Manager will be responsible for managing the activities identified during Discovery and support R Systems in the execution of the project and for coordinating the response to the queries raised by R Systems during the project.

### **1.4.4 Project Tracking & Reporting**

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Following communication mechanism will be used for regular and effective tracking of project progress.

#### **a) Daily Scrum Calls**

R Systems team will conduct a daily scrum call and involve respective MCE business stakeholders to resolve impediments (if any) on as needed basis.

#### **b) Weekly & Monthly Status Report**

R Systems team will publish a weekly & a monthly status report to all stakeholders from R Systems and MCE providing the following details:

- Dashboard of progress against planned activities with original schedule, overruns, reasons for overruns and revised schedule (if required)
- Milestones achieved in previous week, with plan for the next week
- Problems encountered, corrective actions taken, and outstanding problems
- Change request tracking, risk identification, analysis, mitigation and contingencies

### **1.4.5 User Acceptance Testing**

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The testing will be based on an acceptance test plan, prepared by the MCE Technology and Analytics team and other designated members. The prime objective of user acceptance testing is to allow the users to test the complete Request Tracking Systems (RTS) built on Salesforce ensure that it satisfies the business objectives and requirements that were originally mentioned in the RFO and validated later during phase one with the users. The users are responsible for testing the application; the role of R Systems' team is to support. Before this test can begin, the following activities would need to be completed beforehand:

- Conversion & migration of existing data to new system that serves two purposes, viz. validating data conversion and testing via real data
- Creation of user acceptance test (UAT) case
- Use of bug tracking system to log and monitor identified bugs. Test cases would be repeated till the program successfully passes the test cases
- Creation of Test Report and a joint review meet by R Systems, at the conclusion of UAT phase, to discuss the UAT Report
- All bugs will be resolved prior to UAT completion. Successful completion of a UAT marks acceptance of the Request Tracking system, and any other new implementations

### **1.4.6 Knowledge Transfer & Training**

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For all 20 weeks of the R Systems Project Manager along with the team will perform a knowledge transfer to MCE. The knowledge transfer will involve:

- Delivering a written comprehensive plan that outlines all elements of the knowledge transfer
- Providing MCE representatives access to all development, testing, staging, and other environments needed to support the Salesforce enhancements

- Providing MCE IT Staff training on Salesforce enhancements at the conclusion of each iteration cycle and no less than one training session a month.
- Providing execution and control status of knowledge transfer at the end of each development sprint cycle/iteration. As requested by MCE Manager of Technology and Analytics, R Systems will provide execution and control status of knowledge transfer in weekly status reports
- Delivering a written report along with a presentation to MCE on lessons learned on the knowledge transfer process
- Ensuring a successful knowledge transfer to MCE at the end of each iteration. Successful completion of knowledge transfer requires a formal MCE acceptance in writing. A successful knowledge transfer includes delivery of desk procedures, user guides on software updates, maintenance, and operations

### 1.5 High Level Project Schedule

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The Phase 3 implementation will be delivered in 20 Weeks, with multiple sprints where each sprint will focus on delivering a predefined and agreed set of features. Each sprint will be of Two weeks duration. The sprint will include:

- Story Boarding/Task Planning
- Solution/Feature Development
- Test Deployment
- User Demo

### 1.6 Assumptions

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- MCE will assign appropriate contact(s) to participate on-need basis. The contact(s) should be able to understand the project purpose, make decisions related to requirements, provide & facilitate access to necessary individuals & information within MCE, and to approve final deliverables
- MCE will provide necessary and sufficient access to software applications and network for this effort
- The Solution is based on the provided Requirement document
- As part of the best practice recommended by Salesforce, Implementer will be leveraging Out of the Box (OOB) functionality
- Any customization needs to be approved by both MCE's Manager of Technology and Analytics and R Systems.
- The Solution Design consideration should be 90% OOB and only 10% customization. Any deviation should require proper discussion, impacts, and email approval from MCE.
- Test Coverage for customization should be minimum 90%
- All User stories should be captured in JIRA
- Implementation should be by using Agile Methodology
- Complete implementation will happen by using Lightning Web Component (LWC)
- Following Sandbox, will be provided for implementation
  - 1 (Partial Copy) Sandbox will be available for DEV
  - 1 (Partial Copy) Sandbox will be available for QA
  - 1 (Full Copy Sandbox) will be available for UAT.

## 2 Duration for Phase 3

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The term of this SOW begins on August 9, 2021 and ends on December 27, 2021. Any change in project duration, resource requirement, and scope will be subject to change request to be mutually discussed, agreed and approved in writing by MCE and Implementer.

Phase 3 will be completed in 20 weeks. Any additional time needed to complete Phase 3 will be communicated to MCE prior to exceeding proposed timeline and will be charged based on the rates listed in Exhibit B.

The total cost of this SOW will not exceed more than \$207,000, assuming there is no change request. Any change request will be approved by MCE and Implementer.

**Statement of Work****Schedule A.5****Statement of Work for Data Analytics Platform ("DAP")**

This Schedule A.5 is entered into as of **December 20, 2021** ("Schedule A.5") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and R SYSTEMS, INTERNATIONAL LIMITED, hereinafter referred to as "Contractor", dated **April 9, 2021** ("MSA").

MCE and Contractor hereby agree that Schedule A.3 (regarding phase 3 of Data Analytics Platform for MCE) is terminated as of January 2, 2022.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 4 of Data Analytics Platform for MCE

Attached as **Attachment E** is the technical scope of work for this request. The technical scope of work for this Schedule A.5 is for 17 weeks, going until April 29, 2022; however, all work intended to be performed after March 31, 2022 is subject to the approval of MCE's Board of Directors, Technical Committee, or Executive Committee, including any additional funds needed to perform that work. In the event there is any conflict between the Terms of this Schedule A.5 and Attachment E regarding the services and the relationship between the Parties, the Terms of this Schedule A.5 and the MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**

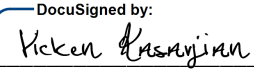
Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$35,700** for the term of this Statement of Work. In no event shall the total cost to MCE for the services provided under all statements of work between Contractor and MCE exceed the contract amount set forth in Section 3 of the MSA.

**Term of Statement of Work:**

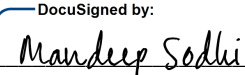
This Statement of Work shall commence on **January 3, 2022** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.5 on the date first above written.

**APPROVED BY****Marin Clean Energy:**

By:  \_\_\_\_\_  
DocuSigned by:  
ACC4B8FA2E834F3...  
 Title: COO  
 Date: 12/20/2021

**Contractor:**

By:  \_\_\_\_\_  
DocuSigned by:  
41823A26DE73449...  
 Name: Mandeep Sodhi  
 Date: 12/20/2021

**Statement of Work****Schedule A.6****Statement of Work for Customer Relationship Management ("CRM")**

This Schedule A.6 is entered into as of **December 20, 2021 ("Schedule A.6")** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and R Systems, International Limited, hereinafter referred to as "Contractor," dated **April 9, 2021 ("MSA")**.

MCE and Contractor hereby agree that Schedule A.4 (regarding phase 3 of CRM System) is terminated as of January 2, 2022.

Contractor will provide the following services as requested and directed by MCE Manager of Technology and Analytics, up to the maximum time/fees allowed under this Statement of Work:

- Implement phase 4 of CRM System

Attached as **Attachment F** is the technical scope of work for this request. The technical scope of work for this Schedule A.6 is for 17 weeks, going until April 29, 2022; however, all work intended to be performed after March 31, 2022 is subject to the approval of MCE's Board of Directors, Technical Committee, or Executive Committee, including any additional funds needed to perform that work. In the event there is any conflict between the Terms of this Schedule A.6 and Attachment F regarding the services and the relationship between the Parties, the Terms of this Schedule A.6 and the MSA shall govern and control the rights and obligations of MCE and Contractor.

**Billing:**

Contractor shall bill monthly on a time and materials basis and according to the rate schedule listed in Exhibit B of the MSA for hours performed. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$177,750** for the term of this Statement of Work. In no event shall the total cost to MCE for the services provided under all statements of work between Contractor and MCE exceed the contract amount set forth in Section 3 of the MSA.

**Term of Statement of Work:**

This Statement of Work shall commence on **January 3, 2022** and shall terminate on **March 31, 2022**.

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.6 on the date first above written.

**APPROVED BY****Marin Clean Energy:**

DocuSigned by:  
By: Picken Kasanjian  
ACC4B8FA2E834F3...  
Title: COO  
Date: 12/20/2021

**Contractor:**

DocuSigned by:  
By: Mandeep Sodhi  
41823A26DE73449...  
Name: Mandeep Sodhi  
Date: 12/20/2021



## Attachment E

### Technical Scope of Work for Data Analytics Platform Phase 4

#### 1.1 Major milestones for the Phase-4 (Continuation from Phase 3)

##### 1. Data Ingestion

- a. Customer data ingestion [CRCR files]
- b. SMD Usage data ingestion [Share my data from PG&E]
- c. Billing data ingestion [Invoice data]
- d. PG&E Blue bills (Monthly Energy Statements)
- e. Gas Data ingestion and processing
- f. Spatial dataset ingestion
- g. Ad-hoc data ingestion

##### 2. ETL data pipeline

- a. Interval/Usage data Transformation logic (3 days window for Usage data)
- b. XML Data modeling
- c. Create the ETL job using PySpark.
- d. Test the ETL job end to end.

##### 3. Azure Databricks (Provision on demand)

- a. Analyze Cost effectiveness of Azure Databricks (Provision on demand)
- b. Productionize and automate all the data pipelines.

##### 4. Data warehouse (Synapse)

- a. Create tables and views for the following data:
  - i. Customer data
  - ii. SMD date
  - iii. Billing data
  - iv. PG&E Blue bills
- b. Utilize Azure Synapse as serverless service to utilize pay-per-use.

##### 5. Reporting

- a. BI Environment creation and report generation. Approx. 20+ reports.

##### 6. CRM support

- a. Data engineering team will support CRM team for data engineering work in Azure.

##### 7. Job Monitoring

- a. Robust metadata and auditing log tables.
- b. Monitoring design for both Customer and Usage Job.
- c. The metrics could be but not limited to:
  - i. How many jobs ran in a time window?
  - ii. Job Status: Which Job failed or succeeded.
  - iii. ETL job execution time and detail.

#### Resource plan

Not all the team member will be working full time except the Azure Engineers.

File Type	Task Type	W1	W2	W3	W4	W5	W6	W7	W8	W9	W10	W11	W12	W13	W14	W15	W16	W17	W18	W19	W20
Customer Master 40%	Development																				
	Unit and Integration Testing																				
SMD	Name parsing																				
	Development																				
Billing Data	Unit and Integration Testing																				
	Development																				
PG&E Blue bills	Unit and Integration Testing																				
UAT and Prod support	Support																				
	R-1																				
	R-2																				

## 2.1 R Systems Resources

The primary responsibilities of the roles are described herein, but it is also understood that the individuals will not be limited to the stated responsibilities but will be required to take up other appropriate tasks and responsibilities as the project demands.

Role	Role Description	Responsibilities
<b>Data Engineer</b>	Will have 5-10 years of experience in working with ETL data pipelines on-prem and cloud. 2+ years of experience working with Azure data platform including ADLS and Azure Data warehouse.	Configure, install, develop, deploy and schedule Data pipeline in-line with designed Azure architecture and infrastructure. Job design review sessions and performance recommendations. Also, Perform ETL and do data validation
<b>BI Engineer</b>	5-10 years of experience in data visualization	Designing, developing and maintaining business intelligence reports

## 2.2 Assumption

- Adding/removing resource will require 2 weeks of notice period.
- For Customer 4013  
Files will be copied from PG&E server only There are approx. 15 Reference tables Design will be provided by client
- SMD  
Design will be provided by client

## 3.1 Team Composition

Here is the proposed team composition:

Team Member	Number of Members
Data Engineer	2
BI Engineer	1

## 4.1 Effort for Phase-4

The term of this SOW begins on January 4, 2022 and ends on April 29, 2022. Funds and work in this SOW expended in April 2022 are subject to MCE Board approval.

It will be 17 weeks of effort for the phase. And, this is T&M based project.

## 5.1 Cost

Includes Phase-4 design and implementation.

Offshore **17 weeks** engagement

Name	Hours	Total
Data Engineer 1	40 hours/week	\$35
Data Engineer 2	20 hours/week	\$35
BI Engineer	20 hours/week	\$35

Rough estimate of total cost in 17 weeks would be:

80 hours (40 hrs./week) x \$35 x 17 weeks

= **\$47,600\***

\* Work and funds for specific technical deliverables expended in April 2022 are subject to MCE Board approval.

Note: The total cost of the project will not exceed more than \$47,600, assuming there is no change request. Any change request will be approved by MCE and R Systems project manager.

Phase-4 will be T&M based project. As per estimation, this phase will be of 17 weeks.

**Add-on resources**

In case more resources are needed besides two data engineers and one BI engineer, those can be added as need basis as mentioned in the rate card below:

Resource	Hourly rate
Data Engineer	\$35
Visualization Developer	\$35

**Payment Terms**

R Systems will invoice MCE for all time expended in at the agreed upon hourly rate and plus actual travel and living expenses. Any travel and/or living expenses needed by Contractor to perform the Services herein require MCE's approval prior to the expense being incurred. MCE will be billed monthly.

**5.1 Change Request Form**

CHANGE REQUEST FORM		
Change Description		
Project Name: MCE DAP	Change Name:	Number:
Requested By:	Contact:	Date:
Description of Change:		
Reason for Change:		
Priority [Circle One]: 1. High 2. Medium 3. Low		
Impact on Deliverables:		
Impact of Not Responding to Change (and Reason Why):		
Date Needed:	Approval of Request:	Date:

Change Impact
Tasks/Scope Affected:
Cost Evaluation:
Risk Evaluation:
Additional Resources:
Duration:
Impact on Deadline:
Comments:

Sign Offs	
[Circle One]: 1. Accepted 2. Deferred 3. Rejected 4. More Info Requested	
Comments:	
Project Manager Signature:	Date:
Decision Maker Signature:	Date:

## Attachment F

### Technical Scope of Work for Customer Relationship Management Phase

Contractor will hereinafter be referred to as “Implementer”, “R Systems”, “our” and/or “we” and MCE will hereinafter be referred to as “User”, “you” and/or “your”.

#### 1.1 Project Lifecycle

---

This Project will be implemented in concurrence with Agile methodology framework.

##### 1.1.1 Project Standard Operating Procedures

---

The following section will define roles and responsibilities of Implementer for the Project

- We will create user stories based on the requirements shared by MCE
- We will follow Source Code versioning standards as defined by MCE
- Our team will be responsible for Code reviews before deployments
- We will be responsible for Solution Design, development activities, unit testing
- We will ensure adherence to Salesforce coding standards and subsequent coding best practices
- Deployment to be undertaken by the Implementer along with publishing a consolidated list of deployment artefacts at end of each sprint
- MCE Business Team to provide written user acceptance testing sign-off prior to Production deployment
- We will provide following set of documents at the time of Project completion including but not limited to:
  - Technical Implementation details
  - Architectural Limitations details (if any)
  - Deployment Document
  - Change Log
- We will provide 2 weeks of Post Go Live warranty support
- MCE to provide Project Completion Certificate Post Go Live
- We will provide user training as required by MCE

##### 1.1.2 Quality Assurance Scope

---

The responsibility for Quality Assurance will be with MCE which should include but not limited to:

- Validate and sign off acceptance criteria for each story
- Smoke and Sanity checks at end of each deployment cycle
- Regression testing at point of delivery of each sprint increment
- Establish a bug tracking interface and turnaround cadence
- Publish a fully detailed test case repository on any tool as chosen by MCE
- Publish a passing percentage report for each sprint increment

#### 1.2 General Scope and Deliverable

---

##### **CRM Setup & Security**

The Salesforce setup will encompass the following artifacts:

##### d. User Profiles & Permission Sets

Profiles in Salesforce defines the tasks an authorized user that can perform in the system. It also controls what data they can or cannot see. Permission Sets open additional access that is required by only a specific sub-set of users underneath a common / different profile(s).

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

**e. User Roles**

The Implementer will modify the user role hierarchy structure in Salesforce, as needed. Role Hierarchy can be used with Organization-Wide Security settings to determine the levels of access that users have to your CRM org's data. Roles within the hierarchy affect access on key components such as records and reports.

**f. User Credentials**

The Implementer will modify each user to unique username, password, and Profile, as needed. This deliverable will include creating Salesforce Users for identified MCE Resources.

**g. Organization-Wide Security**

The org-wide sharing defaults will set the baseline access for records. This allows controlling visibility of record rows based on Record Ownership. It allows controlling access to an Object's records by setting them as Full control to Owner, Read Only for Everyone except Owner, Read Write for Everyone, etc. It also allows opening record access to Salesforce users above the Owner in the Role Hierarchy.

The Implementer will build upon the basic structure created in Phase 1 to be more specific, as needed, per MCE's requirements.

**Document Deliverables & User Trainings**

The Implementer will work with MCE staff to support the preparation of the following:

- Business Requirement Document - This will document the User Stories for each Major Deliverable.

The Implementer will provide the following:

- Solution Design Document - This document will include:
  - Technical Implementation
  - Architectural Limitations
- Deployment Document - This document will include the Pre and Post Deployment steps to take for successfully deploying the changes to the Production CRM Environment.

The Implementer will also conduct the following Trainings for MCE Administrators:

- Managing the Salesforce Environment
- Onboarding and Offboarding Salesforce Users

The Implementer will conduct the following Trainings for identified MCE users to help them understand and familiarize themselves with the system. MCE will be responsible for providing the list of users.

**1.3 Specific Technical Deliverables**

Implementer will provide the following deliverables in Sprints, based upon priority from top to bottom:

	2022 - January	2022 - February	2022 - March	2022 - April*
• Import Calpine Historical Activities, as Activities into MCE CRM				
• Completion of LIFT implementation, including Partner access to specific "need-to-know" data				
• Implement, configure (with PA input), and integrate RingCentral CTI				
• Expand Billing Management to include Blue Bills				

• Extensions and relabeling of existing CP program		
• Evaluate business processes for all agency communications and program engagements. I.e. Formstack and communications preferences.		
Production Support - • Housekeeping for existing UI elements that might be obsolete • Prioritize Feature Queue, and implement some • Review, prioritize, and address adhoc issues that arise (as needed)		
• Dynamic Top N Report (Combination of CRM and DW work)		

\* Work and funds in this SOW expended in April 2022 are subject to MCE Board approval.

#### 1.4 Deployment

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For Phase 4 the following environment will be provisioned:

##### **Prod Environment**

The development will start in a sandbox environment and once the user acceptance training (“UAT”) is complete, all changes will be pushed into production.

##### **DEV ENVIRONMENT**

Each developer will have their own dev environment if needed and push changes daily to fullcopy sandbox.

#### 1.4.1 Discovery Process

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For each Discovery Phase R Systems will engage with a stakeholder identified by MCE. This engagement will be over daily scheduled calls between the MCE Stakeholder and R Systems at a mutually acceptable time.

MCE Stakeholders will be responsible for sharing the Business processes and Security considerations required. As part of the discussions, R Systems will document and prepare:

- a) A System Requirement Specification Document (SRS) capturing the requested Business processes and Security considerations for review and approval by MCE stakeholders. This SRS will be considered as an Epic.
- b) Individual user stories under the Epic by breaking the SRS into small, manageable, and trackable development pieces. Each User Story will include but not be limited to:
  - a. Schema Changes (Custom Objects & Fields)
  - b. Display Layout Changes (Page Layouts)
  - c. Security Changes (Field Level Security, Organization Wide Sharing Settings, Profile Access, Sharing Rules)
  - d. Business Processes (Validation Rules, Automations)
  - e. Acceptance Criteria which will define Definition of Done (DoD) which will be pre-signed off by the MCE Stakeholder to freeze the requirement of each ticket.
  - f. Each story will be recorded as a project backlog.
  - g. These stories will be planned for each Sprint Milestone as part of the details outlined in Section **Error! Reference source not found. Error! Reference source not found.**

R Systems will be documenting the above in a Tool provided and approved by MCE. MCE stakeholder will be responsible for signing off on the Acceptance Criteria for each story documented in the tool (Jira / Asana / Trello / Any other tool proposed by MCE).

#### 1.4.2 Quality Assurance Process

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The Quality Assurance process will be MCE's Responsibility. The scope of this process will include details laid out under Section 1.1.2 Quality Assurance Scope.

The following process will be followed per Sprint:

- a) R Systems will develop individual user stories defined in the Discovery Phase in Developer Sandboxes and perform unit testing to ensure that the stories meet the defined Acceptance Criteria.
- b) R Systems will then deploy changes for individual user stories to QA Sandbox thereby making these changes available for MCE's QA team to validate.
- c) MCE's QA team will test these deployed user stories as per the QA scope and ensure that all the parameters laid out under the Acceptance criteria are met.
- d) In case any deviation is identified, QA Team will raise appropriate Bug / Enhancement Tickets for the Development team to fix either as part of the current Sprint or as part of the upcoming Sprint.
- e) Once all laid out parameters for the story are met, the QA Team will be responsible to mark the Story as QA Complete
- f) Any Change Requests identified during QA Testing, will be logged as a separate User Story (Enhancement), and will be placed in the Project Backlog. R Systems will be responsible to perform Effort estimations to evaluate if it can be absorbed as part of this project's scope or taken up as a future project.

#### 1.4.3 Project Planning & Coordination

At project kick-off, R Systems will engage all the stakeholders responsible for implementation of the project. The stakeholders including MCE's designee will be involved in the initial project planning and shall be kept in consultation and with information while monitoring the progress and refining the plans and documents across different phases in consultation. The R Systems Project Manager will be responsible for managing the activities identified during Discovery and support R Systems in the execution of the project and for coordinating the response to the queries raised by R Systems during the project.

#### 1.4.4 Project Tracking & Reporting

Following communication mechanism will be used for regular and effective tracking of project progress.

- a) Daily Scrum Calls  
R Systems team will conduct a daily scrum call and involve respective MCE business stakeholders to resolve impediments (if any) on as needed basis.
- b) Weekly & Monthly Status Report  
R Systems team will publish a weekly & a monthly status report to all stakeholders from R Systems and MCE providing the following details:
  - Dashboard of progress against planned activities with original schedule, overruns, reasons for overruns and revised schedule (if required)
  - Milestones achieved in previous week, with plan for the next week
  - Problems encountered, corrective actions taken, and outstanding problems
  - Change request tracking, risk identification, analysis, mitigation and contingencies

#### 1.4.5 User Acceptance Testing

The testing will be based on an acceptance test plan, prepared by the MCE Technology and Analytics team and other designated members. The prime objective of user acceptance testing is to allow the users to test the complete Request Tracking Systems (RTS) built on Salesforce ensure that it satisfies the business objectives and requirements that were originally mentioned in the RFO and validated later during phase one with the users. The users are responsible for testing the application; the role of R Systems' team is to support. Before this test can begin, the following activities would need to be completed beforehand:

- Conversion & migration of existing data to new system that serves two purposes, viz. validating data conversion and testing via real data
- Creation of user acceptance test (UAT) case
- Use of bug tracking system to log and monitor identified bugs. Test cases would be repeated till the program



successfully passes the test cases

- Creation of Test Report and a joint review meet by R Systems, at the conclusion of UAT phase, to discuss the UAT Report
- All bugs will be resolved prior to UAT completion. Successful completion of a UAT marks acceptance of the Request Tracking system, and any other new implementations

#### 1.4.6 Knowledge Transfer & Training

---

For all 17 weeks of the R Systems Project Manager along with the team will perform a knowledge transfer to MCE. The knowledge transfer will involve:

- Delivering a written comprehensive plan that outlines all elements of the knowledge transfer
- Providing MCE representatives access to all development, testing, staging, and other environments needed to support the Salesforce enhancements
- Providing MCE IT Staff training on Salesforce enhancements at the conclusion of each iteration cycle and no less than one training session a month.
- Providing execution and control status of knowledge transfer at the end of each development sprint cycle/iteration. As requested by MCE Manager of Technology and Analytics, R Systems will provide execution and control status of knowledge transfer in weekly status reports
- Delivering a written report along with a presentation to MCE on lessons learned on the knowledge transfer process
- Ensuring a successful knowledge transfer to MCE at the end of each iteration. Successful completion of knowledge transfer requires a formal MCE acceptance in writing. A successful knowledge transfer includes delivery of desk procedures, user guides on software updates, maintenance, and operations

#### 1.5 High Level Project Schedule

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The Phase 4 implementation will be delivered in 17 Weeks, with multiple sprints where each sprint will focus on delivering a predefined and agreed set of features. Each sprint will be of Two weeks duration. The sprint will include:

- Story Boarding/Task Planning ☐ Solution/Feature Development
- Test Deployment ☐ User Demo

#### 1.6 Assumptions

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- MCE will assign appropriate contact(s) to participate on-need basis. The contact(s) should be able to understand the project purpose, make decisions related to requirements, provide & facilitate access to necessary individuals & information within MCE, and to approve final deliverables
- MCE will provide necessary and sufficient access to software applications and network for this effort
- The Solution is based on the provided Requirement document
- As part of the best practice recommended by Salesforce, Implementer will be leveraging Out of the Box (OOB) functionality
- Any customization needs to be approved by both MCE's Manager of Technology and Analytics and R Systems.
- The Solution Design consideration should be 90% OOB and only 10% customization. Any deviation should require proper discussion, impacts, and email approval from MCE.
- Test Coverage for customization should be minimum 90%
- All User stories should be captured in JIRA
- Implementation should be by using Agile Methodology
- Complete implementation will happen by using Lightning Web Component (LWC)
- Following Sandbox, will be provided for implementation
  - 1 (Partial Copy) Sandbox will be available for DEV
  - 1 (Partial Copy) Sandbox will be available for QA
  - 1 (Full Copy Sandbox) will be available for UAT.

## 2 Duration for Phase 4

---

The term of this SOW begins on January 3, 2022 and ends on April 29, 2022. Work and funds in this SOW expended in April 2022 are subject to MCE Board approval. Any change in project duration, resource requirement, and scope will be subject to change request to be mutually discussed, agreed and approved in writing by MCE and Implementer.

Phase 4 will be completed in 17 weeks. Any additional time needed to complete Phase 4 will be communicated to MCE prior to exceeding proposed timeline and will be charged based on the rates listed in Exhibit B.

The total cost of this SOW will not exceed more than \$237,000,\* assuming there is no change request. Any change request will be approved by MCE and Implementer.

\* Funds for specific technical deliverables expended in April 2022 are subject to MCE Board approval.



March 3, 2022

TO: MCE Technical Committee  
FROM: Alexandra McGee, Manager of Strategic Initiatives  
RE: MCE Resiliency Fund Expenditure for Vulnerable, Critical Needs Customers (#05 C.3)

Dear Technical Committee Members:

**SUMMARY:**

On November 21, 2019, your Board approved the creation of a Resiliency Fund with initial funding in the amount of \$3,000,000. The creation of this fund was in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events significantly impact the safety, reliability, health and welfare of our customers, and disproportionately affect vulnerable populations. In March 2020, MCE's Executive Committee approved a portion of these funds to invest in high quality, off-grid batteries to improve resiliency for our customers dependent on electrical medical devices for their functional and access needs. By providing clean technology alternatives, this investment minimized the need for those customers to purchase carbon-emitting generators and fossil-fuel technologies.

In 2020 staff used a portion of these funds to purchase 100 of Goal Zero's Yeti 3000X batteries as a turnkey resiliency solution for customers for whom outages posed a medical risk. This portable lithium battery provides 3kWh of storage, 2000W of continuous power, and a 3500W surge for running high-power devices as back-up power. Depending on the medical device it is powering, it can generally run for 1-2 days after a full charge from a standard electrical outlet in 14 hours. The battery is rated for 500 cycles to 80% of its original capacity and over 2000 cycles in its life cycle.

These batteries were offered at no-cost to qualifying customers who applied via the intake form hosted by the California Foundation for Independent Living. These applications were then segmented out to the three Centers for Independent Living (CIL) operating in MCE's communities – the Marin Center for Independent Living, the Independent Living Resources of Solano and Contra Costa, and the Disability Services and Legal Center of Napa County.

Batteries were provided to these CILs depending on the proportional concentration of eligible customers in their service areas as well as the capacity of each of these CILs to receive and distribute the batteries. Creative solutions were found for delivery, including tapping into emergency COVID-19 transportation resources offered by the Developmental Disabilities Council in Contra Costa County. These batteries went to help a whole range of people dependent on various devices, including a heart run on electricity (at 6:03 [here](#)) creating a lifeline for people during emergency situations.

Given the success of the program and the continued need for resiliency support for our most vulnerable customers, staff is proposing to replicate this effort with a slightly different implementation. This year, we can use stronger data to pinpoint customers most likely to suffer an outage and have negotiated an opportunity for direct delivery rather than coordinating a network of partners to distribute a bulk purchase.

For this 2022 proposal, MCE staff is defining vulnerable customers include low-income customers, those with critical medical needs that could become life threatening without power, and those who have experienced multiple outages in the last two years. The following data represent customers who are both on a low-income rate (CARE or FERA) as well as on the Medical Baseline program, and who have experienced two or more outages since 2019.

Community	Outages 2019-2021: 2	3	4	5	6	7	8	9	Grand Total
SAN RAFAEL INC	177								177
UNINC MARIN CO	97	58	21						176
NOVATO INC	163								163
AMERICAN CANYON INC	132								132
UNINC NAPA CO	2	1	5	9	8	8	13	11	57
PINOLE INC	53								53
LAFAYETTE INC	24	11							35
SAN ANSELMO INC	23	8							31
FAIRFAX INC	3	27							30
LARKSPUR INC	29								29
CALISTOGA INC						15	10	3	28
MORAGA INC	2	21							23
UNINC CONTRA COSTA CO	9	10	3						22
TIBURON INC	19								19
MILL VALLEY INC	17	2							19
CORTE MADERA INC	16								16
UNINC SOLANO CO	12								12
RICHMOND INC	9								9
SAUSALITO INC	4	3							7
SAN RAMON INC		5							5

EL CERRITO INC	3								3
BELVEDERE INC	2								2
WALNUT CREEK INC	1								1
NAPA INC		1							1
ROSS INC	1								1
<b>Grand Total</b>	<b>798</b>	<b>147</b>	<b>29</b>	<b>9</b>	<b>8</b>	<b>23</b>	<b>23</b>	<b>14</b>	<b>1051</b>

Of the 1051 customers who are low-income, depend on electrical medical devices, and have seen two or more outages between 2019 and 2021, 106 of them have experienced more than four outages.

Unincorporated Napa – 54  
 Calistoga – 28  
 Unincorporated Marin – 21  
 Unincorporated Contra Costa – 3

Due to disrupted supply chains and global freight challenges, the costs of the Yeti 3000X has increased from our 2020 negotiation of \$2,100/unit+ tax and shipping. However, if a purchase order can be made before March 15, staff has negotiated a new deal with Goal Zero to lock in the current wholesale prices. Based on best current estimates, this is anticipated to be \$2550/battery unit, plus \$240 in California sales tax and \$45 for freight, a total estimated cost of \$2,835 for a single unit delivered to the customer. Compared to the retail rate of \$3,399.95 + taxes and freight, this represents a savings of roughly \$850 per unit or a combined savings of roughly \$85,000 for all 100 units.

Goal Zero has committed to honoring this price even for all individual deliveries. This would allow for customers to receive the batteries directly rather than coordinating different partners for transport. This special price goes up by \$75/unit for orders made after March 15.

**Fiscal Impacts:** Expenditures related to the referenced purchase would be funded completely from the Board-approved FY2021/22 MCE Resiliency Fund.

**Recommendation:** Approve the expenditure of \$300,000 to purchase up to 100 Yeti 3000X batteries and to compensate participating community partners to provide off-grid resiliency to MCE's most vulnerable customers during grid outages.



March 3, 2022

TO: MCE Technical Committee

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Power Purchase Agreements with CES Electron Farm One, LLC  
(Agenda Item #06)

ATTACHMENTS: A. Power Purchase Agreement with CES Electron Farm One, LLC (4.4 MW)  
B. Power Purchase Agreement with CES Electron Farm One, LLC (.24 MW)

Dear Technical Committee Members:

**Background:**

In June 2018, the California Public Utilities Commission (CPUC) issued Decision (D.)18-06-027, creating new programs to promote the installation of renewable generation among residential customers in disadvantaged communities (DACs). The programs include the DAC Green Tariff (DAC-GT) and the Community Solar Green Tariff (CS-GT) programs.

MCE filed its Implementation Advice Letter with the CPUC on May 7, 2020 requesting approval to administer DAC-GT and CS-GT programs, and received approval on April 15, 2021. MCE uses the customer facing program names, Green Access for DAC-GT and Community Solar Connection for CS-GT.

The Green Access and Community Solar Connection programs are both designed to provide a 100% renewable energy service option with a 20% electricity bill discount to eligible customers living within a DAC designated as in the top quartile (25%) by CalEnviroScreen. The Green Access program allows MCE to build up to 4.64 MW of new build solar within PG&E's service territory to serve customers that meet income eligibility requirements. The Community Solar Connection program allows MCE to build up to 1.28 MW of local, community-based solar that is located within MCE's service territory and within five miles of the subscribing customers' DAC census tract.

**Summary of Procurement Activity:**

MCE issued a solicitation in August 2021, for new build solar to serve the Green Access and

Community Solar Connection programs. The solicitation concluded in November and resulted in offers for the Green Access program, however no offers were received for the Community Solar Connection program. The top ranked offers for the Green Access program were the Conflitti solar projects, which consist of; 1) a 4.4 MW solar facility and 2) an adjacent .24 MW solar facility, both with CES Electron Farm One, LLC. The combined total capacity of these two projects fills MCE's Green Access program capacity. MCE is requesting Technical Committee approval of two Power Purchase Agreements (PPAs) resulting from its 2021 solicitation.

The Conflitti solar projects are being developed by White Pine Development, LLC and are located in Fresno County. The Conflitti offers were the lowest price bids and the 4.4 MW resource was the only offer able to obtain Full Capacity Deliverability Status (FCDS). FCDS enables the facility to provide Resource Adequacy value.

### **Additional Information:**

#### White Pine Development, LLC

- Headquartered in San Francisco, CA
- 3.2 Gigawatts (GW) of total renewable energy experience developed in the last five years

#### Overview

- Combined Projects:
  - 4.64 MW total nameplate capacity, solar photovoltaic
- Capable of supplying the annual electric needs of approximately 3,052 low-income MCE residential customers living in a disadvantaged community
- Project locations: Fresno County, California
- Guaranteed Commercial Operation Dates: September 30, 2023
- Contract terms: 20 years
- Expected annual energy production: approximately 12,922.98 MWhs, including all capacity and environmental attributes associated therewith
- Energy price:
  - Fixed energy price applicable to each year of contract
- Credit: No credit or collateral obligations for MCE
- Seller Collateral: MCE would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones
- Union labor requirement: Contractors are required to enter into union project labor agreements (PLA) for all on-site construction
- Pollinator friendly habitat requirement

### **Fiscal Impacts:**

There would be no impact on the Fiscal Year 2021/22 budget. Incremental costs would be accounted for in future budgets.

### **Recommendation:**

Approve the proposed Power Purchase Agreements with CES Electron Farm One, LLC.

PROPOSED EXECUTION VERSION

**DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)**

**RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

**Seller:** CES Electron Farm One, LLC

**Buyer:** Marin Clean Energy, a California joint powers authority

**Description of Facility:** A 4.4 MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 4.0 (or the latest version) tool (such community, a "**DAC**"), within PG&E's distribution service territory.

**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	5/29/2019
<b>Documentation of Conditional Use Permit if required:</b> <b>[X] CEQA, [ ] Cat Ex, [ ] Neg Dec, [X] Mitigated Neg Dec, [ ] EIR</b>	10/31/2022
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	3/3/2020
<b>Executed Interconnection Agreement</b>	3/30/2022
<b>Financial Close</b>	3/31/2023
<b>Expected Construction Start Date</b>	8/1/2023
<b>Full Capacity Deliverability Status Obtained</b>	1/11/2022
<b>Initial Synchronization</b>	8/1/2023
<b>Network Upgrades completed</b>	N/A
<b>Expected Commercial Operation Date</b>	12/31/2023

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.



**Expected Energy:**

Contract Year	Expected Energy (MWh)
1-20	12,254 MWh in Contract Year 1, and subject to annual degradation of 0.50%.

**Guaranteed Capacity:** 4.4 MW

**Contract Price:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status and Expected FCDS Date:
- ☒ Ancillary Services

**Scheduling Coordinator:** Buyer/Buyer Third Party

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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**Exhibits:**

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

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

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

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

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

**“Buyer”** means Marin Clean Energy, a California joint powers authority.

**“Buyer Bid Curtailment”** means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

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

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

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

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

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

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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



**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“CEQA”** means the California Environmental Quality Act.

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

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

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

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

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

**“COD Delay Damages”** means an amount equal to [REDACTED].

**“Compliance Actions”** has the meaning set forth in Section 3.10.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.10.

**“Confidential Information”** has the meaning set forth in Section 18.118.1.

**“Construction Delay Damages”** means an amount equal to [REDACTED].

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

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

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

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

**“Contract Year”** means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

**“CPUC Approval”** means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

**“Curtailement Cap”** means the yearly quantity per Contract Year, in MWh, equal to [REDACTED].

**“Curtailement Order”** means any of the following:

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

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but

not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

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

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

**"DAC-GT"** means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

**"Day"** or **"day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

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

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

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

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

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Day-Ahead Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**"Deficient Month"** has the meaning set forth in Section 4.7(e).

**"Delay Damages"** means Construction Delay Damages and COD Delay Damages.

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

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

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

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

**“Early Termination Date”** has the meaning set forth in Section 11.2.

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

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

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

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

**“Energy”** means electrical energy (measured in MWh) generated by the Facility.

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

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

**“Facility Energy”** means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

**“Facility Meter”** means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

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

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

**“Force Majeure Event”** has the meaning set forth in Section 10.110.1.

**“Forced Facility Outage”** means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.7(a).

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

**“Full Capacity Deliverability Status Finding”** means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

**“Future Environmental Attributes”** shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made

during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party hereto.

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

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Capacity”** means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

**“Guaranteed Energy Production”** means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

**“Guaranteed RA Amount”** means the amount of MW equal to the Net Qualifying Capacity (NQC) of the Facility.

**“Guarantor”** means, with respect to Seller, any Person that (a) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (b) has a tangible net worth of at least [REDACTED], (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

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

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

**“Indemnified Party”** has the meaning set forth in Section 16.116.1.

**“Indemnifying Party”** has the meaning set forth in Section 16.116.1.

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

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

**“Interconnection Agreement”** means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator pursuant to which the Facility will be interconnected with the Transmission System and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities, as applicable, will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

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

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated December 19, 2008, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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



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

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

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

**“Moody’s”** means Moody’s Investors Service, Inc.

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

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

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

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

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

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

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

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

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

**“Pacific Prevailing Time”** means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

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

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

**“Performance Measurement Period”** shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

**“Permitted Transferee”** means an entity that has, or is controlled by another Person that satisfies the following requirements:

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

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

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

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

**“Planned Outage”** has the meaning set forth in Section 4.5(a).

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

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

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

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

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

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

**“Prudent Industry Practice”** means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

**“Qualified Issuer”** 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 A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

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

**“RA Deficiency Amount”** has the meaning set forth in Section 3.7(d).

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

**“RA Shortfall Amount”** means, for purposes of calculating an RA Deficiency Amount under Section 3.7(d), the extent, expressed in kW, to which during any RA Shortfall Month, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the NQC the Facility would have otherwise qualified for due to (a) the Facility not having achieved Full

Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO's reduction in the Net Qualifying Capacity of the Facility due to the Facility's actual Forced Facility Outage rate (i.e., past performance)

**"RA Shortfall Month"** means the applicable calendar month following the RA Guarantee Date during which there is an RA Shortfall Amount.

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

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

**"Remedial Action Plan"** has the meaning in Section 2.5.

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

**"Renewable Energy Incentives"** means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**"Resource Adequacy"** means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

**"Resource Adequacy Benefits"** means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

**"Resource Adequacy Rulings"** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

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

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

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

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

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

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

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.7(a).

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

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

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

“**Site**” means the necessary real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

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

“**Station Use**” means the Energy (including Energy produced by the Facility) that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

**“Terminated Transaction”** has the meaning set forth in Section 11.2.

**“Termination Payment”** has the meaning set forth in Section 11.111.3.

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

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

**“Transmission System”** means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

**“Ultimate Parent”** means [REDACTED]

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

**“Workforce Requirements”** means, collectively, the workforce and prevailing wage requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b).

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(e).

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

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

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

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

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

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

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

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

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

(g) the terms “include” and “including” or similar words shall be deemed to be followed by the words “without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

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

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

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Industry Practice shall have such meaning in this

Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) “or” is not necessarily exclusive; and

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

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

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

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

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

(d) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;



(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(h) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages;

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

(k) Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff;

(l) Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable;

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

(n) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(o) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

**2.3 CPUC Approval.** Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

**2.4 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.5 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.6 Workforce Requirements.** Seller agrees to comply with the Workforce Requirements and to provide Buyer copies of documentation establishing ongoing compliance

with the Workforce Requirements as may be reasonably requested by Buyer from time to time.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable prices set forth in Exhibit C, all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

#### **3.5 Future Environmental Attributes**

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

costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

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

3.6 **Test Energy.** Prior to the Commercial Operation Date, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues received by Buyer for such Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

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

(c) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(d) Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [REDACTED]; provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. RA Deficiency Amounts will be netted against amounts owing to Seller pursuant to Section 8.6.

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

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

(g) Subject to Section 3.11 and at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

### 3.9 **California Renewables Portfolio Standard.**

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

reasonable efforts” as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

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

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

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

### 3.10 Change in Law.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) Compliance Expenditure Cap. If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in clauses

(a), (b) and (c) below, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [REDACTED] (“**Compliance Expenditure Cap**”):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

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

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

#### 4.2 Title and Risk of Loss.

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 ("Average Expected Energy"), or as reasonably requested by Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the Available Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("Monthly Delivery Forecast"), or as reasonably requested by Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Industry Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Capacity and (ii) hourly expected Facility Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller



fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Facility Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for such amounts (the "**Forecasting Penalty**") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.

(f) CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

#### 4.4 **Dispatch Down/Curtailment**

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in accordance with Exhibit C.

4.5 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such

maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

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

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

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

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.16.2.

4.6 **Scheduling Coordinator Responsibilities.** Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in **Exhibit D.**

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

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated,

any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller's obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.8 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, Curtailment Periods, Buyer Default, and Buyer Curtailment Periods (the "**Adjusted Energy Production**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

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

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and

Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization (collectively, the "**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the Dedicated Interconnection Capacity.

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

## ARTICLE 5 TAXES

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

5.2 **Cooperation.** The Parties shall cooperate to minimize tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit M. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

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

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice

shall reflect the CAISO T+9 settlement information and shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within five (5) Business Days after the CAISO T+9 settlement information becomes available.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice, payment or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by

the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

**8.6 Netting of Payments.** The Parties hereby agree that they shall discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

**8.7 Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of any unpaid Construction Delay Damages within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (ii) indicates its intent not to renew such Letter of Credit

and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit or Guaranty that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

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

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

## **ARTICLE 9 NOTICES**

**9.1 Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested



changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

### **10.1 Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this

Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

**10.2 No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

**10.3 Notice for Force Majeure.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.114.2 or 14.3, as appropriate; or

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

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

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

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

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date within [REDACTED] days of the Guaranteed Construction Start Date

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Industry Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days;

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

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

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

(B) the failure of the Guarantor to make any payment required under any Guaranty;

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to meet the definition of Qualified Issuer;

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

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

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

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

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

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

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

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

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

(d) to suspend performance; or

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

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

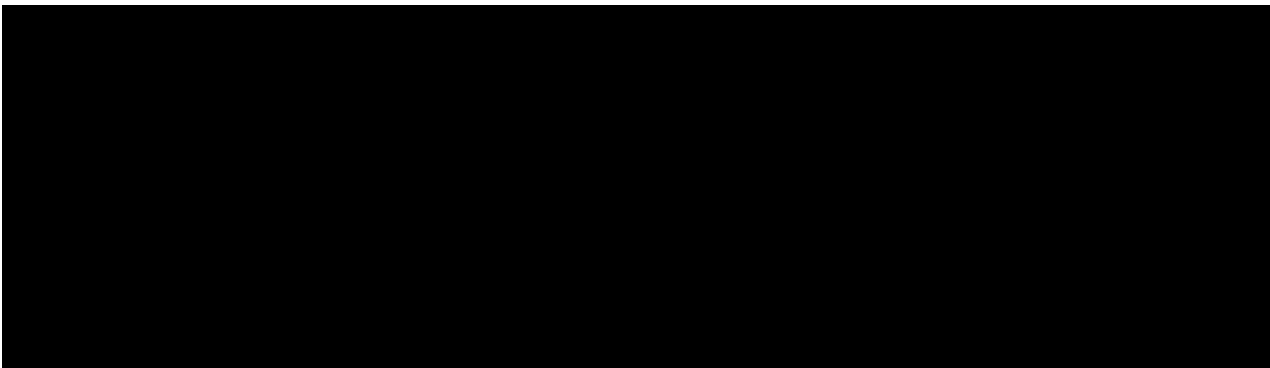
**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

**11.6 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this

Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.



**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES

CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their



positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that, throughout the Contract Term, with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

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

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

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

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to use commercially reasonable efforts to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to enter into a project labor agreement of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall use commercially reasonable efforts to ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local Hire Requirement**"). Seller's construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to satisfy the Local Hire Requirement.

(c) **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats.** If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming

activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15<sup>th</sup> anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

- (A) 36-inch minimum height above ground of the lowest edge of the solar panels;
- (B) Burying conduits and wiring with homeruns tight to bottom of panels;
- (C) Designing inter-row access/spacing to enable vegetation management; and
- (D) Utilizing 'BeeWhere' registration if beehives are placed onsite.

Additional pollinator reference materials can be found at Pollinator Partnership at [www.pollinator.org](http://www.pollinator.org) and EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

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

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

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

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

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

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure

period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

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

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the

event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

(i) If the financing transaction is or includes a tax equity transaction, Buyer shall in good faith work with Seller and Lender to agree upon a Buyer estoppel certificate containing customary terms and conditions reasonably acceptable to Buyer, Seller and Lender.

(j) Buyer and Seller acknowledge that the Facility may be financed or refinanced as a portfolio along with other projects or assets owned by Seller and its Affiliates.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

## ARTICLE 15 DISPUTE RESOLUTION

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals 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 fee, 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 this Agreement.

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

in addition to court costs and any and all other costs recoverable in said action.

## ARTICLE 16 INDEMNIFICATION

### 16.1 Indemnification.

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 16.116.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

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



endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) **Umbrella/Excess Liability Insurance.** Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

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

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully

in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

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

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

## ARTICLE 19 MISCELLANEOUS

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

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

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

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

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

“public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the

applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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

*[Signatures on following page]*

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

**CES ELECTRON FARM ONE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARIN CLEAN ENERGY, a California  
joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Conflitti

**Site includes all or some of the following APNs:**

**County:** Fresno County, California

**Type of Generating Facility:** Solar photovoltaic

**Guaranteed Capacity:** 4.4 MW

**Maximum Output:** 4.4 MW

**Delivery Point:** Facility Pnode

**Interconnection Point:** Panoche 1102 distribution line, Panoche Substation Bank 3. 36.628, - 120.568

**Facility Pnode:**

**Participating Transmission Owner:** Pacific Gas and Electric Company (PG&E) (or any successor entity)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
  
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.



- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
  - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
  - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
  - a. a Force Majeure Event occurs;
  - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller;
  - c. [REDACTED]
  - d. [REDACTED]

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

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

## EXHIBIT C

### COMPENSATION

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

(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of [REDACTED]

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

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

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

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined under the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

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

## **EXHIBIT E**

### **FORM OF PROGRESS REPORT**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. List of issues that are likely to potentially affect Seller's Milestones.
9. Seller's monthly report shall (a) describe the progress towards meeting the Milestones, including whether Seller has met or is on target to meet the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting. Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1****FORM OF AVERAGE EXPECTED ENERGY REPORT**

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-2

### FORM OF MONTHLY AVAILABLE CAPACITY REPORT

[Available Capacity, MW per hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.



## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

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

where:

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

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

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

D = Contract Price, in \$/MWh

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

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

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

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

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

4. A performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

5. \_\_\_\_\_ The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.

6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].

7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between CES Electron Farm One, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by CES Electron Farm One, LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

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

**CES ELECTRON FARM ONE, LLC**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, *[insert bank name and address]* (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of *[insert date]* and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on *[insert date]* which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) email to *[bank email address]* or (c) facsimile to *[bank fax number]*. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, 1125 Tamalpais Avenue San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

---

[*Insert officer name*]

[*Insert officer title*]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

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

3. The undersigned is a duly authorized representative of Marin Clean Energy, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

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

[Specify account information]

Marin Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

## EXHIBIT L

### FORM OF GUARANTY

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

#### Recitals

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

#### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the



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

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

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

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

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

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

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

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

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

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

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

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

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

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

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

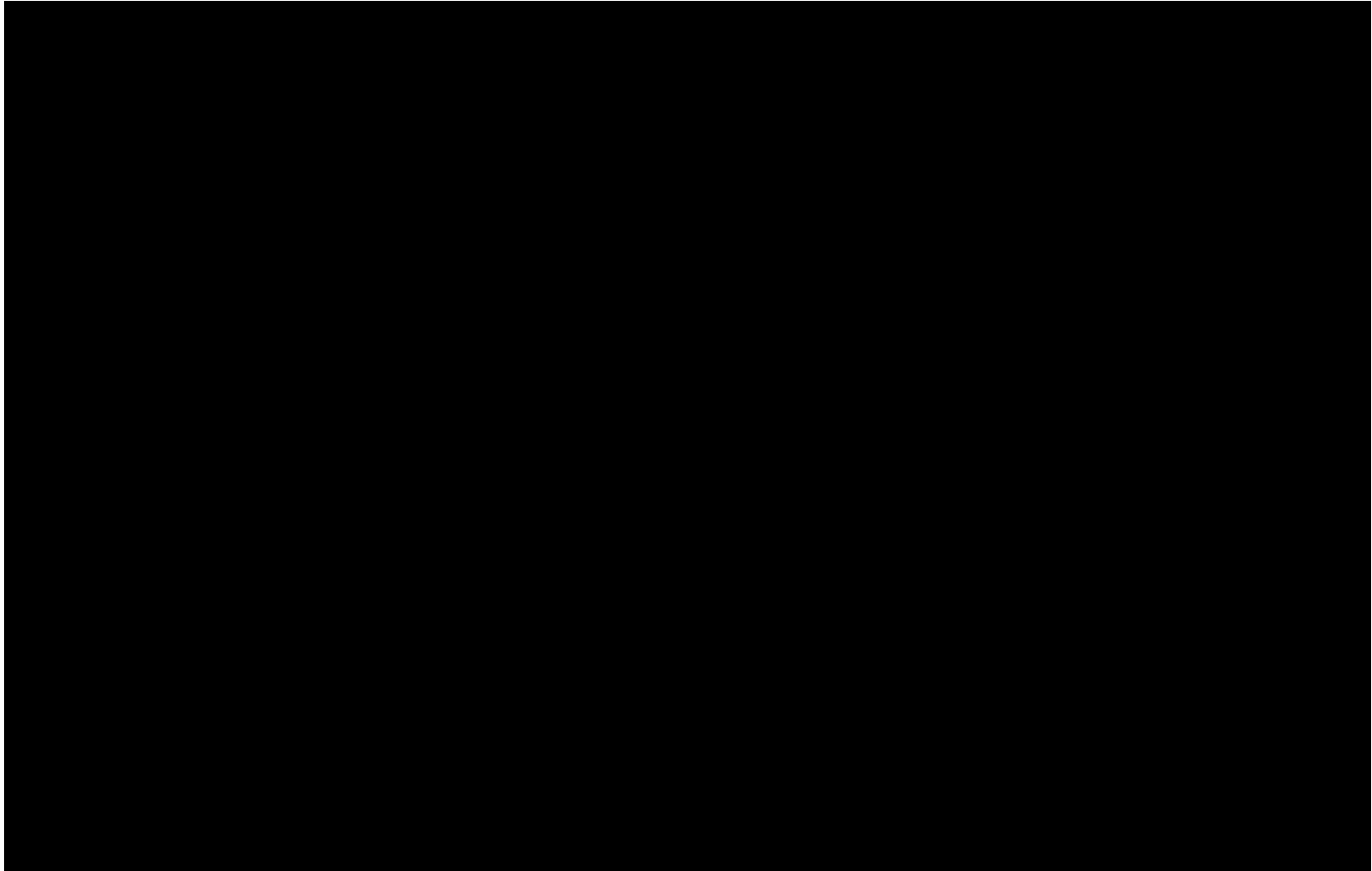
Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M**  
**METERING DIAGRAM**



## EXHIBIT N

### NOTICES

<b>CES ELECTRON FARM ONE, LLC</b> <b>("Seller")</b>	<b>MARIN CLEAN ENERGY, a California</b> <b>joint powers authority ("Buyer")</b>
<b>All Notices:</b>  Street: 1808 Wedemeyer St, Suite 221 City: San Francisco, CA, 94122 Attn: Asset Management Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>All Notices:</b>  Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: 84-4804147 (Parent)	<b>Reference Numbers:</b> Duns: 829602338 Federal Tax ID Number: 26-4300997
<b>Invoices:</b> Attn: Accounts Payable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Invoices:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Scheduling:</b> Attn: Scheduling Phone: 248-808-2015 Email: <a href="mailto:chris.woodington@whitepinerenew.com">chris.woodington@whitepinerenew.com</a>	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 Email: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a>
<b>Confirmations:</b> Attn: CEO Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Payments:</b> Attn: Accounts Receivable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Payments:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> 
<b>With additional Notices of an Event of Default to:</b> Attn: Jordan Dansby Phone: 703-618-0851 Email: <a href="mailto:jordan@cleanenergycounsel.com">jordan@cleanenergycounsel.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Emergency Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Emergency Contact:</b> Attn: Phone: Email:

## EXHIBIT O

### SELLER COMMITMENTS

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☒ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☒ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 4.0 (or the latest version) Tool;
- ☒ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☒ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☒ Projects that commit to including components and materials manufactured and/or assembled in the United States; and
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of a partnership with a local non-profit for a jobs training program for the first 5 years for training related to solar installation and / or operations and maintenance.
- ☐ Other: [*describe open space preservation, habitat improvement, or food programs*].



## EXHIBIT P

### POLLINATOR SCORECARD



#### Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



##### 1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points  
☐ 46-60 % +10 points  
☐ 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

##### 2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points  
☐ 51-75% +10 points  
☐ 76-100% +15 points

Total points

##### 3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points  
☐ 12-15 species +10 points  
☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

##### 4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points  
☐ Summer (June-August) +5 points  
☐ Fall (September-November) +5 points  
☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

##### 5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points  
☐ Native trees/shrubs +2 points  
☐ Clean, perennial water sources +2 points  
☐ Created nesting feature(s) (i.e., native bee houses) +2 points

Total points

##### 6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points  
☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

##### 7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points  
☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points  
☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

##### 8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points  
☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points  
☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

##### 9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85  
 Meets Pollinator Standards 70-84

Project Name:  
 Vegetation Consultant:  
 Project Location:  
 Total acres (array and open area):  
 Projected Seeding Date:

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

**POLLINATOR  
PARTNERSHIP**



**EXHIBIT Q**  
**OPERATING RESTRICTIONS**

## EXHIBIT R

### DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

## MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

**\* Required**

1. Email address \*

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2. Business Name \*

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3. Where is your business located/headquartered? \*

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4. Is your business certified under General Order 156 (GO 156)? \*

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com)

*Mark only one oval.*

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

10/9/2020

MCE Supplier Diversity Questionnaire

5. If you answered "yes" or "qualified but not certified", under which categories?

Please choose all that apply. \*

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ Woman owned
- ☐ Minority Owned
- ☐ Disabled Vet Owned
- ☐ LGBT owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)

6. If a minority-owned business enterprise, certified or qualified as which of the following? \*

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

10/9/2020

MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

*Mark only one oval.*

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

10/9/2020

MCE Supplier Diversity Questionnaire

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here:

<https://sch.supplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

*Check all that apply.*

- ☐ 1 Agricultural production- crops
- ☐ 2 Agricultural production- livestock
- ☐ 7 Agricultural services
- ☐ 8 Forestry
- ☐ 9 Fishing, hunting, and trapping
- ☐ 10 Metal mining
- ☐ 12 Coal mining
- ☐ 13 Oil and gas extraction
- ☐ 14 Nonmetallic minerals, except fuels
- ☐ 15 General building contractors
- ☐ 16 Heavy construction contractors
- ☐ 17 Special trade contractors
- ☐ 20 Food and kindred products
- ☐ 21 Tobacco manufactures
- ☐ 22 Textile mill products
- ☐ 23 Apparel and other textile products
- ☐ 24 Lumber and wood products
- ☐ 25 Furniture and fixtures
- ☐ 26 Paper and allied products
- ☐ 27 Printing and publishing
- ☐ 28 Chemicals and allied products
- ☐ 29 Petroleum and coal products
- ☐ 30 Rubber and miscellaneous plastics products
- ☐ 31 Leather and leather products
- ☐ 32 Stone, clay, glass, and concrete products
- ☐ 33 Primary metal industries
- ☐ 34 Fabricated metal products
- ☐ 35 Industrial machinery and equipment
- ☐ 36 Electrical and electronic equipment
- ☐ 37 Transportation equipment
- ☐ 38 Instruments and related products
- ☐ 39 Miscellaneous manufacturing industries
- ☐ 41 Local and interurban passenger transit

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYQdqeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 42 Motor freight transportation and warehousing
- ☐ 43 U.S. Postal Service
- ☐ 44 Water transportation
- ☐ 45 Transportation by air
- ☐ 46 Pipelines, except natural gas
- ☐ 47 Transportation services
- ☐ 48 Communications
- ☐ 49 Electric, gas, and sanitary services
- ☐ 50 Wholesale trade--durable goods
- ☐ 51 Wholesale trade--nondurable goods
- ☐ 52 Building materials, hardware, garden supply, & mobile home
- ☐ 53 General merchandise stores
- ☐ 54 Food stores
- ☐ 55 Automotive dealers and gasoline service stations
- ☐ 56 Apparel and accessory stores
- ☐ 57 Furniture, home furnishings and equipment stores
- ☐ 58 Eating and drinking places
- ☐ 59 Miscellaneous retail
- ☐ 60 Depository institutions
- ☐ 61 Nondepository credit institutions
- ☐ 62 Security, commodity brokers, and services
- ☐ 63 Insurance carriers
- ☐ 64 Insurance agents, brokers, and service
- ☐ 65 Real estate
- ☐ 67 Holding and other investment offices
- ☐ 70 Hotels, rooming houses, camps, and other lodging places
- ☐ 72 Personal services
- ☐ 73 Business services
- ☐ 75 Automotive repair, services, and parking
- ☐ 76 Miscellaneous repair services
- ☐ 78 Motion pictures
- ☐ 79 Amusement and recreational services
- ☐ 80 Health services
- ☐ 81 Legal services
- ☐ 82 Educational services
- ☐ 83 Social services
- ☐ 84 Museums, art galleries, botanical & zoological gardens
- ☐ 86 Membership organizations
- ☐ 87 Engineering and management services

<https://docs.google.com/forms/d/12VVqgNBa7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 88 Private households
- ☐ 89 Miscellaneous services
- ☐ 91 Executive, legislative, and general government
- ☐ 92 Justice, public order, and safety
- ☐ 93 Finance, taxation, and monetary policy
- ☐ 94 Administration of human resources
- ☐ 95 Environmental quality and housing
- ☐ 96 Administration of economic programs
- ☐ 97 National security and international affairs

10. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

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Subcontractors

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? \*

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable



10/9/2020

MCE Supplier Diversity Questionnaire

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. : \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

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13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

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#### Labor Agreements

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

10/9/2020

MCE Supplier Diversity Questionnaire

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? \*

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

*Check all that apply.*

- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, history of local hire but not in this contract with MCE
- ☐ Yes, history of union labor but not in this contract with MCE
- ☐ Yes, history of multi-trade PLA but not in this contract with MCE
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

15. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

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16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

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10/9/2020

MCE Supplier Diversity Questionnaire

17. If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?

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18. Does your business pay workers prevailing wage rates or the equivalent? \*

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to [www.dir.ca.gov/Public-Works/Prevailing-Wage.html](http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html)

*Mark only one oval.*

- ☐ Yes, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

19. Does your business support and/or use apprenticeship programs? \*

*Mark only one oval.*

- ☐ Yes, including in this contract with MCE
- ☐ Yes, but not in this contract with MCE
- ☐ No
- ☐ Not applicable

10/9/2020

MCE Supplier Diversity Questionnaire

20. If yes, please describe the apprenticeship programs supported/used.

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Equity, Diversity,  
Inclusion, and Justice

MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

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22. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below.

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Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

10/9/2020

MCE Supplier Diversity Questionnaire

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11/11

PROPOSED EXECUTION VERSION

**DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)**

**RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

**Seller:** CES Electron Farm One, LLC

**Buyer:** Marin Clean Energy, a California joint powers authority

**Description of Facility:** A 0.24 MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 4.0 (or the latest version) tool (such community, a "**DAC**"), within PG&E's distribution service territory.

**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	5/29/2019
<b>Documentation of Conditional Use Permit if required:</b> <b>[ X ] CEQA, [ ] Cat Ex, [ ] Neg Dec, [X] Mitigated Neg Dec, [ ] EIR</b>	10/31/2022
<b>Executed Interconnection Agreement</b>	12/15/2022
<b>Financial Close</b>	3/31/2022
<b>Expected Construction Start Date</b>	8/1/2023
<b>Initial Synchronization</b>	8/1/2023
<b>Network Upgrades completed</b>	N/A
<b>Expected Commercial Operation Date</b>	12/31/2023

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.

**Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1 - 20	668 MWh in Contract Year 1, and subject to annual degradation of 0.50%

**Guaranteed Capacity:** 0.24 MW

**Contract Price:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Capacity Attributes

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2022 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

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

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

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

**“Buyer”** means Marin Clean Energy, a California joint powers authority.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of a Buyer Curtailment Order; provided that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

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

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

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy.

Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“CEQA”** means the California Environmental Quality Act.

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

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

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

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

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

**“COD Delay Damages”** means an amount equal to [REDACTED]

**“Compliance Actions”** has the meaning set forth in Section 3.10.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.10.

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

**“Construction Delay Damages”** means an amount equal to [REDACTED]

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

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

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

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

**“Contract Year”** means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

**“CPUC Approval”** means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

**“Curtailment Order”** means any of the following:

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

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

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

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

**"DAC-GT"** means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

**"Day"** or **"day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

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

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Facility was available to produce and would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be determined in a commercially reasonable manner by Buyer by reference to the Average Expected Energy amounts set forth Exhibit F, less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**"Deficient Month"** has the meaning set forth in Section 4.7(e).

**"Delay Damages"** means Construction Delay Damages and COD Delay Damages.

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



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

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

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

**“Early Termination Date”** has the meaning set forth in Section 11.2.

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

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

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

**“Energy”** means electrical energy (measured in MWh) generated by the Facility.

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

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

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

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

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

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

**“Facility Energy”** means the Energy during any applicable measurement period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

**“Facility Meter”** means the revenue-grade meter that meets the requirements of the Participating Transmission Owner that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will

be subject to adjustment in accordance with applicable meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

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

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

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

“**Forced Facility Outage**” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.7(a).

“**Future Environmental Attributes**” shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“**Gains**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party hereto.

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

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Capacity”** means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

**“Guaranteed Energy Production”** means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

**“Guarantor”** means, with respect to Seller, any Person that (a) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (b) has a tangible net worth of at least [REDACTED] (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes

and delivers a Guaranty for the benefit of Buyer.

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

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

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

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

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

“**Interconnection Agreement**” means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator, as applicable, pursuant to which the Facility will be interconnected with the Transmission System and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities, as applicable, will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated December 19, 2008, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit K.

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

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

**“Moody’s”** means Moody’s Investors Service, Inc.

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

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

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

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

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

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

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

**“Pacific Prevailing Time”** means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

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

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

**“Performance Measurement Period”** shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

**“Permitted Transferee”** means an entity that has, or is controlled by another Person that satisfies the following requirements:

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

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

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

**“Planned Outage”** has the meaning set forth in Section 4.5(a).

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

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

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

**“Prudent Industry Practice”** means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

**“Qualified Issuer”** 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 A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

**“Remedial Action Plan”** has the meaning in Section 2.5.

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

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

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

**“Seller’s WREGIS Account”** has the meaning set forth in Section 4.7(a).

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

**“Site”** means the necessary real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

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

**“Station Use”** means the Energy (including produced by the Facility) that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

**“Terminated Transaction”** has the meaning set forth in Section 11.2.

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

**“Transmission System”** means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point.



**“Ultimate Parent”** means [REDACTED]

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.7(e).

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

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

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

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

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

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

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

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

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

(g) the terms “include” and “including” or similar words shall be deemed to be followed by the words “without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

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

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

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

(l) “or” is not necessarily exclusive; and

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

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

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

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

(c) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(d) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(e) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(f) Seller has demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(g) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages;

(j) Twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers;

(k) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(l) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

**2.3 CPUC Approval.** Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

**2.4 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.5 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.5, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.6 Workforce Requirements.** Seller agrees to provide Buyer copies of documentation establishing ongoing compliance with the workforce and prevailing wage

requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b) as may be reasonably requested by Buyer from time to time.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable prices set forth in Exhibit C, all of the Product produced by or associated with the Facility. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Reserved.**

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

3.5 **Future Environmental Attributes**

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

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental

Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

### 3.6 **Reserved.**

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

3.8 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

### 3.9 **California Renewables Portfolio Standard.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

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

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

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

### 3.10 Change in Law.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard (collectively, the “**Compliance Actions**”); provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) Subject to Seller establishing to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with the Compliance Actions, the maximum amount of out-of-pocket expenses Seller shall be obligated to bear during the Delivery Term with respect to the Compliance Actions shall be capped at [REDACTED] (“**Compliance Expenditure Cap**”).

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges.

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

### **4.2 Title and Risk of Loss.**

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 Forecasting. Seller shall provide the Available Capacity forecasts described below and shall transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day



Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F (“**Average Expected Energy**”), or as reasonably requested by Buyer.

(b) Reserved.

#### 4.4 **Dispatch Down/Curtailment**

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Buyer Curtailment Order, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in accordance with Exhibit C.

4.5 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a “**Planned Outage**”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with prompt Notice and expected duration (if known) of any Forced Facility Outage that has continued, or is expected to continue, for more than ninety-six (96) hours.

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

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

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

#### 4.6 **Reserved.**

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

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller's obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.8 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, Curtailment Periods, Buyer Default, and Buyer Curtailment Periods (the "**Adjusted Energy Production**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

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

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure throughout the Delivery Term that the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity (the "**Dedicated Interconnection Capacity**").

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

## ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility

hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** The Parties shall cooperate to minimize tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit M. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) the meter data directly relating to the Facility and all inspection, testing and calibration data and reports.

7.2 **Meter Verification.** If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified

seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. Seller may elect to install and maintain, at its own expense, backup metering devices.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within fifteen (15) Business Days after the end of the applicable delivery month.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment or any adjustment to an invoice rendered under this Agreement or adjust any

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

**8.6 Netting of Payments.** The Parties hereby agree that they shall discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

**8.7 Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of any unpaid Construction Delay Damages within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially

in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit or Guaranty that meets the requirements set forth in the definition of Performance Security.

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

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

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

## ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an



act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

**10.2 No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing or any other provision in this Agreement to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

**10.3 Notice for Force Majeure.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief

from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

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

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

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

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

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date within [REDACTED] days of the Guaranteed Construction Start Date;

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, except to the extent due to a Force Majeure Event;

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

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

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

(B) the failure of the Guarantor to make any payment required under any Guaranty;

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to meet the definition of Qualified Issuer;

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

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

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

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

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

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

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

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

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

(d) to suspend performance; or

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

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

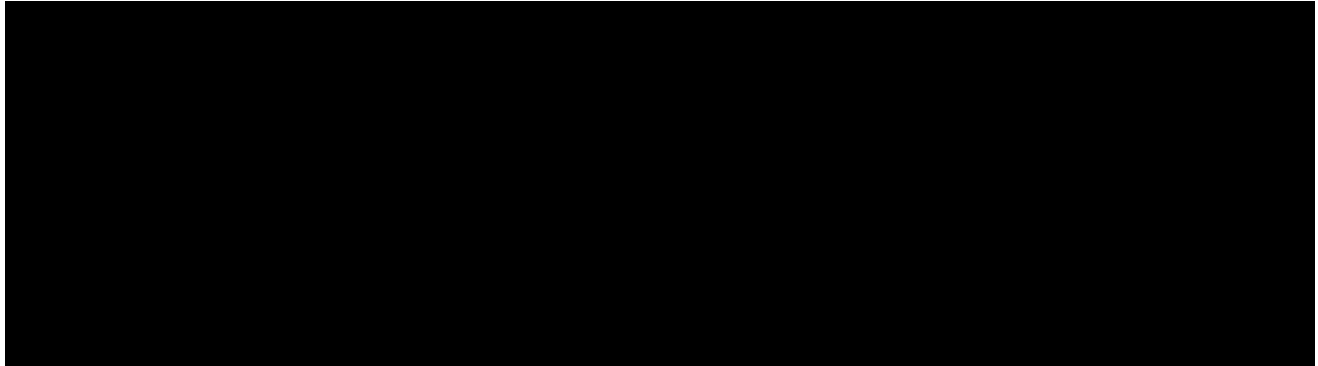
**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

**11.6 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this

Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.



**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES

CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their

positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that, throughout the Contract Term, with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

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



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

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

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to use commercially reasonable efforts to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to enter into a project labor agreement of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall use commercially reasonable efforts to ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local Hire Requirement**"). Seller's construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. Seller shall notify Buyer in writing no later than one hundred twenty (120) days before the Guaranteed Construction Start Date if Seller reasonably expects it will not be able to satisfy the Local Hire Requirement.

(c) **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats.** If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming

activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15<sup>th</sup> anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

- (A) 36-inch minimum height above ground of the lowest edge of the solar panels;
- (B) Burying conduits and wiring with homeruns tight to bottom of panels;
- (C) Designing inter-row access/spacing to enable vegetation management; and
- (D) Utilizing 'BeeWhere' registration if beehives are placed onsite.

Additional pollinator reference materials can be found at Pollinator Partnership at [www.pollinator.org](http://www.pollinator.org) and EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Seller represents and warrants that it will not knowingly, and will use reasonable efforts to ensure that it does not inadvertently, utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland

Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

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

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

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

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

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

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must

itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

(i) If the financing transaction is or includes a tax equity transaction, Buyer shall in good faith work with Seller and Lender to agree upon a Buyer estoppel certificate containing customary terms and conditions reasonably acceptable to Buyer, Seller and Lender.

(j) Buyer and Seller acknowledge that the Facility may be financed or refinanced as a portfolio along with other projects or assets owned by Seller and its Affiliates.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals 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 fee, 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 this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because

of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

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

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however,* that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

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

endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) **Umbrella/Excess Liability Insurance.** Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

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

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully



in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

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

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

## **ARTICLE 19 MISCELLANEOUS**

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

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

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

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

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

“public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Change in Electric Market Design.** If a change in Law renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the

applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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

*[Signatures on following page]*

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

**CES ELECTRON FARM ONE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARIN CLEAN ENERGY, a California  
joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Conflitti

**Site includes all or some of the following APNs:** [REDACTED]

**County:** Fresno County, California

**Type of Generating Facility:** Solar photovoltaic

**Guaranteed Capacity:** 0.24 MW

**Maximum Output:** 0.24 MW

**Delivery Point:** Interconnection Point

**Interconnection Point:** Panoche 1102 distribution line, Panoche Substation Bank 3. 36.628, - 120.568

**Participating Transmission Owner:** Pacific Gas and Electric Company (PG&E) (or any successor entity)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
  
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.

- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
  - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
  - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
  - a. a Force Majeure Event occurs; or
  - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller.
  - c. [REDACTED]
  - d. [REDACTED]



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

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

## EXHIBIT C

### COMPENSATION

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

(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy and Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to [REDACTED]

(c) Excess Settlement Interval Deliveries. If during any applicable measurement period, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of such measurement period, expressed in hours ("Excess MWh"), then the price applicable to all such excess MWh in such measurement period shall be Zero Dollars (\$0).

(d) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

**EXHIBIT D**

**RESERVED**

## **EXHIBIT E**

### **FORM OF PROGRESS REPORT**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. List of issues that are likely to potentially affect Seller's Milestones.
9. Seller's monthly report shall (a) describe the progress towards meeting the Milestones, including whether Seller has met or is on target to meet the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting. Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

## EXHIBIT F

### FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

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

where:

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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for NP-15, plus (b) the market value of Replacement Green Attributes, both as reasonably determined by Buyer.

D = Contract Price, in \$/MWh

**“Replacement Green Attributes”** means Portfolio Content Category 1 Renewable Energy Credits of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. A performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").
5. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between CES Electron Farm One, LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by CES Electron Farm One, LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

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

**CES ELECTRON FARM ONE, LLC**

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, *[insert bank name and address]* (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of *[insert date]* and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on *[insert date]* which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to *[bank email address]* or (c) facsimile to *[bank fax number]*. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, 1125 Tamalpais Avenue San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

---

[*Insert officer name*]

[*Insert officer title*]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

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

3. The undersigned is a duly authorized representative of Marin Clean Energy, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

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

[Specify account information]

Marin Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

## EXHIBIT L

### FORM OF GUARANTY

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

#### Recitals

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

#### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the

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

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

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

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

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

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

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

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

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

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

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

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

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

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



and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

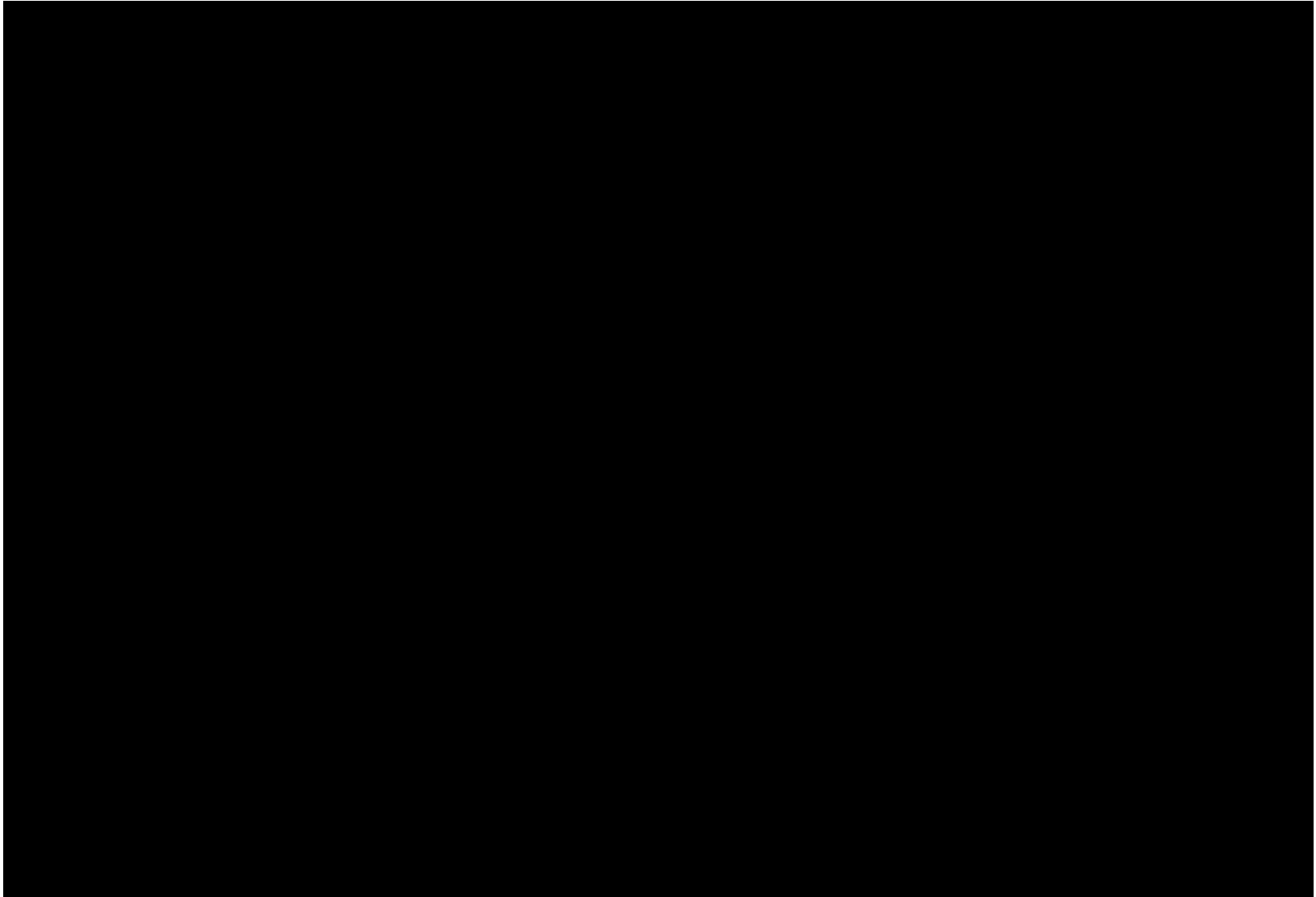
Title: \_\_\_\_\_

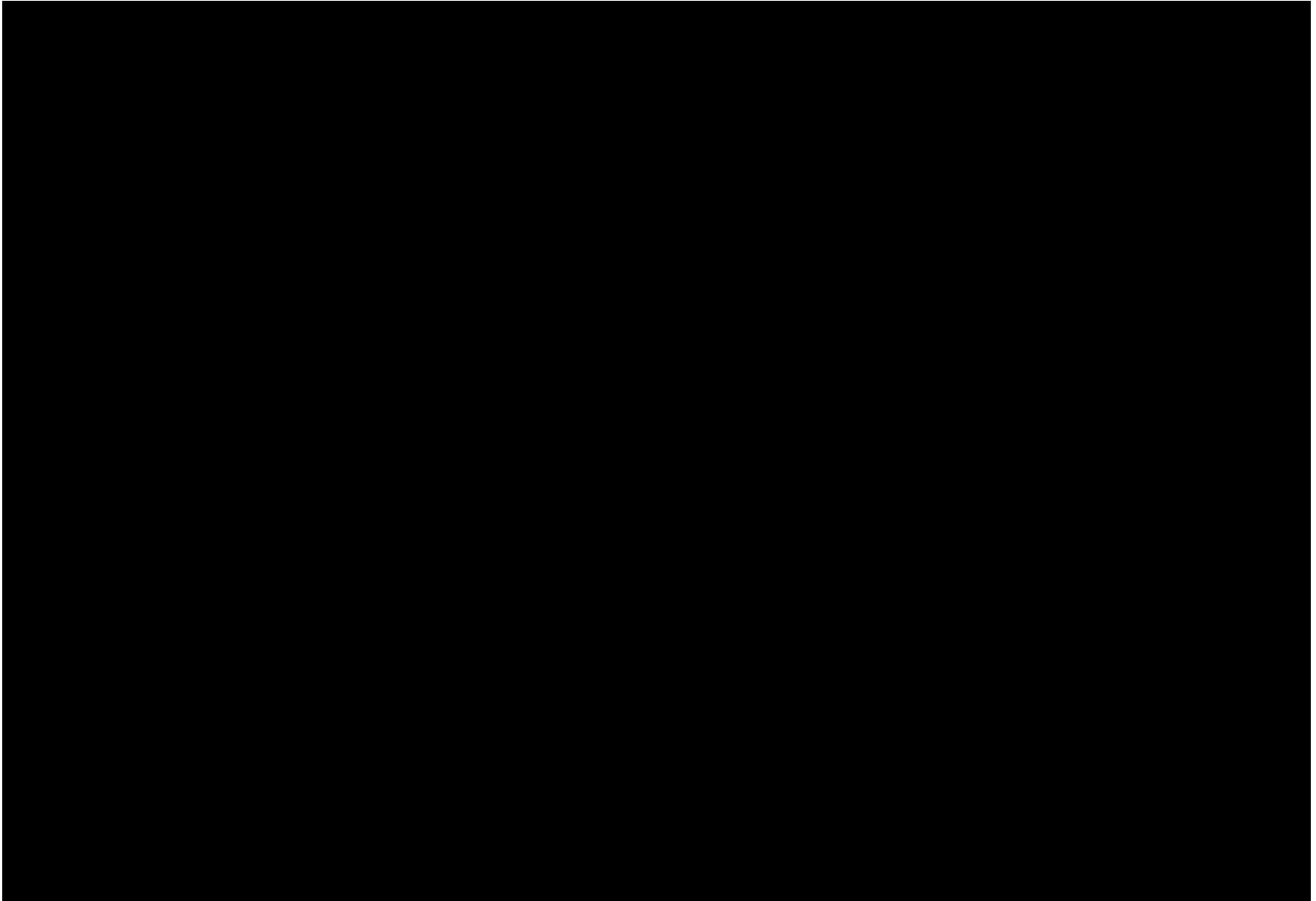
By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M**  
**METERING DIAGRAM**





## EXHIBIT N

### NOTICES

<b>CES ELECTRON FARM ONE, LLC</b> (“Seller”)	<b>MARIN CLEAN ENERGY, a California</b> <b>joint powers authority</b> (“Buyer”)
<b>All Notices:</b>  Street: 1808 Wedemeyer St, Suite 221 City: San Francisco, CA, 94122 Attn: Asset Management Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>All Notices:</b>  Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: <a href="mailto:Procurement@mcccleanenergy.org">Procurement@mcccleanenergy.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: 84-4804147 (Parent)	<b>Reference Numbers:</b> Duns: 829602338 Federal Tax ID Number: 26-4300997
<b>Invoices:</b> Attn: Accounts Payable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Invoices:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: <a href="mailto:Settlements@mcccleanenergy.org">Settlements@mcccleanenergy.org</a>
<b>Scheduling:</b> Attn: Scheduling Phone: 248-808-2015 Email: <a href="mailto:chris.woodington@whitepinerenew.com">chris.woodington@whitepinerenew.com</a>	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 E-mail: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a>
<b>Confirmations:</b> Attn: CEO Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: <a href="mailto:Procurement@mcccleanenergy.org">Procurement@mcccleanenergy.org</a>
<b>Payments:</b> Attn: Accounts Receivable Phone: 248-808-2015 Email: <a href="mailto:accounting@whitepinerenew.com">accounting@whitepinerenew.com</a>	<b>Payments:</b> Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: <a href="mailto:Settlements@mcccleanenergy.org">Settlements@mcccleanenergy.org</a>
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> 
<b>With additional Notices of an Event of Default to:</b> Attn: Jordan Dansby Phone: 703-618-0851 Email: <a href="mailto:jordan@cleanenergycounsel.com">jordan@cleanenergycounsel.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Emergency Phone: 248-808-2015 Email: <a href="mailto:evan@whitepinerenew.com">evan@whitepinerenew.com</a>	<b>Emergency Contact:</b> Attn: Phone: E-mail:

## EXHIBIT O

### SELLER COMMITMENTS

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☒ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☒ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 4.0 (or the latest version) Tool;
- ☒ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☒ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☒ Projects that commit to including components and materials manufactured and/or assembled in the United States; and
- ☒ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of a partnership with a local non-profit for a jobs training program for the first 5 years for training related to solar installation and / or operations and maintenance.
- ☐ Other: *[describe open space preservation, habitat improvement, or food programs]*.

## EXHIBIT P

### POLLINATOR SCORECARD



#### Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



#### 1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points  
☐ 46-60 % +10 points  
☐ 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

#### 2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points  
☐ 51-75% +10 points  
☐ 76-100% +15 points

Total points

#### 3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points  
☐ 12-15 species +10 points  
☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

#### 4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points  
☐ Summer (June-August) +5 points  
☐ Fall (September-November) +5 points  
☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

#### 5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points  
☐ Native trees/shrubs +2 points  
☐ Clean, perennial water sources +2 points  
☐ Created nesting feature(s) +2 points  
 (i.e., native bee houses) Total points

#### 6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points  
☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

#### 7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points  
☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points  
☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

#### 8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points  
☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points  
☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

#### 9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85  
 Meets Pollinator Standards 70-84

Project Name:  
 Vegetation Consultant:  
 Project Location:  
 Total acres (array and open area):  
 Projected Seeding Date:

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

**POLLINATOR  
PARTNERSHIP**



**EXHIBIT Q**  
**OPERATING RESTRICTIONS**



## EXHIBIT R

### DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

## MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

**\* Required**

1. Email address \*

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2. Business Name \*

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3. Where is your business located/headquartered? \*

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4. Is your business certified under General Order 156 (GO 156)? \*

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com)

*Mark only one oval.*

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

10/9/2020

MCE Supplier Diversity Questionnaire

5. If you answered "yes" or "qualified but not certified", under which categories?

Please choose all that apply. \*

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ Woman owned
- ☐ Minority Owned
- ☐ Disabled Vet Owned
- ☐ LGBT owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)

6. If a minority-owned business enterprise, certified or qualified as which of the following? \*

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

10/9/2020

MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

*Mark only one oval.*

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

10/9/2020

MCE Supplier Diversity Questionnaire

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here:

<https://sch.supplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

*Check all that apply.*

- ☐ 1 Agricultural production- crops
- ☐ 2 Agricultural production- livestock
- ☐ 7 Agricultural services
- ☐ 8 Forestry
- ☐ 9 Fishing, hunting, and trapping
- ☐ 10 Metal mining
- ☐ 12 Coal mining
- ☐ 13 Oil and gas extraction
- ☐ 14 Nonmetallic minerals, except fuels
- ☐ 15 General building contractors
- ☐ 16 Heavy construction contractors
- ☐ 17 Special trade contractors
- ☐ 20 Food and kindred products
- ☐ 21 Tobacco manufactures
- ☐ 22 Textile mill products
- ☐ 23 Apparel and other textile products
- ☐ 24 Lumber and wood products
- ☐ 25 Furniture and fixtures
- ☐ 26 Paper and allied products
- ☐ 27 Printing and publishing
- ☐ 28 Chemicals and allied products
- ☐ 29 Petroleum and coal products
- ☐ 30 Rubber and miscellaneous plastics products
- ☐ 31 Leather and leather products
- ☐ 32 Stone, clay, glass, and concrete products
- ☐ 33 Primary metal industries
- ☐ 34 Fabricated metal products
- ☐ 35 Industrial machinery and equipment
- ☐ 36 Electrical and electronic equipment
- ☐ 37 Transportation equipment
- ☐ 38 Instruments and related products
- ☐ 39 Miscellaneous manufacturing industries
- ☐ 41 Local and interurban passenger transit

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYQdqeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 42 Motor freight transportation and warehousing
- ☐ 43 U.S. Postal Service
- ☐ 44 Water transportation
- ☐ 45 Transportation by air
- ☐ 46 Pipelines, except natural gas
- ☐ 47 Transportation services
- ☐ 48 Communications
- ☐ 49 Electric, gas, and sanitary services
- ☐ 50 Wholesale trade--durable goods
- ☐ 51 Wholesale trade--nondurable goods
- ☐ 52 Building materials, hardware, garden supply, & mobile home
- ☐ 53 General merchandise stores
- ☐ 54 Food stores
- ☐ 55 Automotive dealers and gasoline service stations
- ☐ 56 Apparel and accessory stores
- ☐ 57 Furniture, home furnishings and equipment stores
- ☐ 58 Eating and drinking places
- ☐ 59 Miscellaneous retail
- ☐ 60 Depository institutions
- ☐ 61 Nondepository credit institutions
- ☐ 62 Security, commodity brokers, and services
- ☐ 63 Insurance carriers
- ☐ 64 Insurance agents, brokers, and service
- ☐ 65 Real estate
- ☐ 67 Holding and other investment offices
- ☐ 70 Hotels, rooming houses, camps, and other lodging places
- ☐ 72 Personal services
- ☐ 73 Business services
- ☐ 75 Automotive repair, services, and parking
- ☐ 76 Miscellaneous repair services
- ☐ 78 Motion pictures
- ☐ 79 Amusement and recreational services
- ☐ 80 Health services
- ☐ 81 Legal services
- ☐ 82 Educational services
- ☐ 83 Social services
- ☐ 84 Museums, art galleries, botanical & zoological gardens
- ☐ 86 Membership organizations
- ☐ 87 Engineering and management services

<https://docs.google.com/forms/d/12VVqgNBa7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 88 Private households
- ☐ 89 Miscellaneous services
- ☐ 91 Executive, legislative, and general government
- ☐ 92 Justice, public order, and safety
- ☐ 93 Finance, taxation, and monetary policy
- ☐ 94 Administration of human resources
- ☐ 95 Environmental quality and housing
- ☐ 96 Administration of economic programs
- ☐ 97 National security and international affairs

10. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

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Subcontractors

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

\*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? \*

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

10/9/2020

MCE Supplier Diversity Questionnaire

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. : \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

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13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

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Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

**Labor  
Agreements**

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

10/9/2020

MCE Supplier Diversity Questionnaire

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? \*

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

*Check all that apply.*

- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, history of local hire but not in this contract with MCE
- ☐ Yes, history of union labor but not in this contract with MCE
- ☐ Yes, history of multi-trade PLA but not in this contract with MCE
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

15. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

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16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

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10/9/2020

MCE Supplier Diversity Questionnaire

17. If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?

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18. Does your business pay workers prevailing wage rates or the equivalent? \*

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to [www.dir.ca.gov/Public-Works/Prevailing-Wage.html](http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html)

*Mark only one oval.*

- ☐ Yes, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

19. Does your business support and/or use apprenticeship programs? \*

*Mark only one oval.*

- ☐ Yes, including in this contract with MCE
- ☐ Yes, but not in this contract with MCE
- ☐ No
- ☐ Not applicable

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20. If yes, please describe the apprenticeship programs supported/used.

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Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

Equity, Diversity,  
Inclusion, and Justice

MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

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22. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below.

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