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June 20, 2022

California Public Utilities Commission Energy Division Attention: Tariff Unit 505 Van Ness Avenue, 4th Floor San Francisco, CA 94102-3298

MCE Advice Letter 63-E

RE: MCE Disadvantaged Communities Green Tariff Program 2022 Power Purchase Agreement Approval

Pursuant to Decision ("D.") 18-06-027¹ and Resolution E-5124,² Marin Clean Energy ("MCE") hereby submits this Tier 2 Advice Letter ("AL") for approval of two fully executed power purchase agreements ("PPA") that resulted from MCE's initial Disadvantaged Communities Green Tariff ("DAC-GT") Request for Offers ("RFO"). Attached to this AL are:

Attachment A: Renewable Power Purchase Agreement between MCE and CES Electron Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA 1")

Attachment B: Renewable Power Purchase Agreement between MCE and CES Electron Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA 2")

Attachment C: Redline of Conflitti PPA 1

Attachment D: Redline of Conflitti PPA 2

Attachment E: Redline of Pro Forma Small Projects PPA

Attachment F: Confidentiality Declaration

TIER DESIGNATION

This AL has a Tier 2 designation pursuant to Ordering Paragraph ("OP") 8 of Resolution E-5124.

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¹ See. D.18-06-027 at pp. 87-88, approving CCA participation in DAC-GT and CS-GT.

² Resolution E-5124, Ordering Paragraph 8.

EFFECTIVE DATE

Pursuant to G.O. 96-B, MCE requests that this Tier 2 AL become effective on July 20, 2022, which is 30 calendar days from the date of this filing.

CONFIDENTIALITY TREATMENT

MCE is seeking confidential treatment for Attachments A, B, C, and D to this AL. The information for which MCE is seeking confidential treatment is identified in the Confidentiality Declaration in Attachment F. A public version of this AL and its attachments is being served on the service list for R.14-07-002, as described below.

BACKGROUND

On June 21, 2018, the California Public Utilities Commission ("Commission" or "CPUC") approved D.18-06-027, adopting two new community solar programs to promote the use of renewable generation among residential customers in disadvantaged communities ("DACs"),³ as directed by the California Legislature in Assembly Bill ("AB") 327 (Perea), Stats. 2013, ch. 611. The DAC-GT and the CS-GT programs offer 100% solar energy to eligible customers and provide a 20% discount on the electric portion of the bill.

D.18-06-027 allows Community Choice Aggregators ("CCAs") to develop their own DAC-GT and CS-GT programs, and states that CCAs that elect to offer DAC-GT and CS-GT must abide by all rules and requirements adopted in that decision.⁴ Pursuant to OP 17 of D.18-06-027, MCE filed its Implementation AL (MCE AL 42-E) on May 7, 2020. The Commission approved AL 42-E in Resolution E-5124, issued April 15, 2021.

Resolution E-5124 requires MCE to "submit all executed Power Purchase Agreements via a Tier 2 Advice Letter for approval no later than 180 days following notification of selected bidders." MCE now submits this AL to request approval of the executed PPAs attached hereto.

SUMMARY OF SOLICITATION PROCESS

1. Process Overview

MCE first provided notice to its developer distribution list of a forthcoming RFO for the DAC-GT and CS-GT programs in June of 2021. MCE issued its initial DAC-GT and CS-GT RFO on August 27, 2021, consistent with direction in D.18-06-027 which established separate capacity allocations

³ DACs are defined under D.18-06-027 as communities that are identified in the most current version of CalEnviroScreen as among the top 25 percent of census tracts statewide, plus the census tracts in the highest five percent of CalEnviroScreen's Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data. For purposes of this AL, MCE is using CalEnviroScreen 3.0, which was the current version at the time of the solicitation described herein.

⁴ D.18-06-027, p. 104, OP 17.

⁵ Resolution E-5124, OP 8.

and bid requirements for each program.⁶ The RFO was emailed to MCE's developer distribution list and was posted on MCE's website.

MCE hosted an RFO webinar on September 15, 2021 to explain the programs to interested parties and answer questions posed by webinar attendees. Outside of the webinar, MCE provided a dedicated email address for this RFO so that parties could submit questions about the RFO. Answers would have been posted to MCE's website alongside the RFO documents, but no questions were received. Bids for the 2021 DAC-GT and CS-GT RFO were due on November 19, 2021.

2. Offer Selection

In accordance with the cost containment mechanism set forth in Resolution E-4999, MCE only considered offers below the established price cap and that would serve, but not exceed, MCE's DAC-GT capacity allocation. MCE also considered additional quantitative and qualitative evaluation and selection criteria, which included project performance and economics, environmental stewardship, workforce development, project development risk, project location, and impact on DACs.

Unfortunately, MCE received no offers for its CS-GT program. MCE received several complete and conforming offers for DAC-GT, but none would have fully satisfied MCE's 4.64 MW DAC-GT capacity need. The Conflitti project was originally submitted as a 4.4 MW facility. Upon further discussion with the developer, it was determined that sufficient space was available adjacent to the 4.4 MW facility to build an additional 0.24 MW facility. The developer was able to offer the same price as the 4.4 MW facility, which was the lowest priced offer received in response to the RFO and satisfies the cost containment requirements set forth in Resolution E-4999. The offer met all other eligibility requirements outlined in MCE's DAC-GT and CS-GT RFO Protocols.⁷

MCE executed the two Conflitti PPAs with Seller on March 20, 2022. The executed contracts are attached as Attachments A and B, subject to the confidentiality declaration set forth below and in Attachment F. Table 1 below summarizes the selected projects, which together fill MCE's total DAC-GT program capacity allocation.

⁶ D.18-06-027, Sections 6.4 (Adoption of a DAC-Green Tariff) and 6.5.3 (Elements of a Community Solar Green Tariff Program).

⁷ See MCE AL 50-E Attachment 1.

Table 1 – Summary of DAC-GT Projects

Seller/Parent Company:	CES Electron Farm One,	CES Electron Farm One,
	LLC / White Pine	LLC / White Pine
	Development, LLC	Development, LLC
Project Name:	Conflitti 1	Conflitti 2
Technology:	Solar photovoltaic	Solar photovoltaic
Capacity (MW):	4.4	0.24
Estimated Average Energy	12.254	0.668
(Gigawatt Hour (GWh)/Year)		
in Year 1:		
Initial Delivery Date:	12/31/2023	12/31/2023
Delivery Term (Years):	20	20
Vintage (New / Existing /	New	New
Repower):		
Location (City and State):	Firebaugh, CA	Firebaugh, CA

STANDARD CONTRACT TERMS

MCE's pro forma PPA for DAC-GT was submitted in MCE AL 50-E and approved by the Commission on July 10, 2021. Under the pro forma PPA, MCE purchases energy and certain environmental attributes over a term of twenty years. The pro forma PPA requires Seller to submit a project development milestone timeline and provide progress reports to MCE on key development milestones until the project begins delivering energy. The pro forma PPA also requires Seller to provide development security and performance security for the benefit of MCE.

Listed below are descriptions of the changes from the Commission-approved pro forma PPA for both Conflitti PPAs. Redlines exhibiting the changes between the pro forma PPA and the Conflitti PPAs are included hereto as Attachments C and D, subject to the confidentiality declaration set forth below and in Attachment D. As noted above, a redline of the pro forma small projects PPA (from the Commission-approved pro forma PPA), used for the 0.24 MW project discussed above, is also included as Attachment E.

CES Electron Farm One, LLC (4.4 MW PPA)

- Guarantor: MCE made certain changes to the definition of "Guarantor."
- RA Shortfall Amount: MCE made certain changes to the definition of "RA Shortfall Amount" to clarify Seller's RA delivery obligations
- Development; Construction; Progress Reports: MCE agreed to the deletion of a provision that would allow MCE the right to terminate the PPA and retain the Development Security if Seller missed a milestone and failed to reasonably demonstrate a plan to complete the Facility by the Guaranteed COD. See Section 2.4.

- Remedial Action Plan: MCE added language clarifying that, subject to Exhibit B, as long as Seller complies with its obligations to provide a Remedial Action Plan, Seller will not be considered in default solely as a result of missing a milestone. See Section 2.5.
- Sale of Product: MCE deleted certain language to better clarify the Parties' obligations under Section 3.1.
- Force Majeure: MCE made certain clarifying edits to the Force Majeure definitions. See Section 10.1 and 10.2.
- Events of Default: MCE agreed to an additional cure period for one of the Events of Default. See Section 11.1.
- *Seller Pre-COD Liability:* To facilitate project financing, MCE added Section 11.6 to limit Seller's pre-COD liability in the event of a pre-COD default by Seller.
- Workforce and Prevailing Wage Requirements; Local Hire Requirement: The parties added addition clarifications and requirements to this provision. See Section 13.4
- Assignment: MCE made edits to Section 14.1 (including adding definitions for "Change of Control" and "Ultimate Parent") and Section 14.2 to further clarify Buyer's and Seller's respective rights and obligations regarding assignments.
- Extension of Guaranteed Dates; Development Cure Period: MCE agreed to add additional specified circumstances for the Development Cure Period, and the Parties reduced the total number of days available to Seller under the Development Cure Period. See Exhibit B.
- *Seller Commitments:* MCE and Seller revised Exhibit O to specify Seller's commitments, including a pledge of community benefits.
- Other Minor, Non-Material Revisions: MCE made certain edits to correct typographical errors, and other clarifications, updates, and changes in its PPA, including adding projector Seller-specific details. MCE believes these additional revisions are not material and have not summarized them in the specific discussion points above.

CES Electron Farm One, LLC (0.24 MW PPA)

• Changes Due to Guaranteed Capacity Being Less Than 500 kW: In addition to changes described below, MCE made several changes to the Commission-approved PPA because the Facility will not be scheduled with the CAISO due to its small generating capacity. For example, MCE removed or modified the following provisions and related definitions in the PPA due to Facility size: (a) scheduling, bidding, forecasting and other CAISO-related matters; (b) curtailment-related provisions; (c) CAISO metering provisions; (d) Scheduling Coordinator provisions, including Exhibit D; (e) Ancillary Services provisions, and (f) Test Energy.

- Guarantor: MCE made certain changes to the definition of "Guarantor."
- Low-income customers: MCE added the requirement that 25% of the Guaranteed Capacity must be subscribed by eligible low-income customers. See Section 2.2(j).
- Resource Adequacy: This Facility is not expected to have Full Capacity Deliverability Status (FCDS) and therefore all related resource adequacy provisions were deleted from the PPA.
- Development; Construction; Progress Reports: MCE agreed to the deletion of a provision that would allow MCE the right to terminate the PPA and retain the Development Security if Seller missed a milestone and failed to reasonably demonstrate a plan to complete the Facility by the Guaranteed COD. See Section 2.4.
- Remedial Action Plan: MCE added language clarifying that, subject to Exhibit B, as long as Seller complies with its obligations to provide a Remedial Action Plan, Seller will not be considered in default solely as a result of missing a milestone. See Section 2.5.
- Sale of Product: MCE deleted certain language to better clarify the Parties' obligations under Section 3.1.
- Force Majeure: MCE made certain clarifying edits to the Force Majeure definitions. See Section 10.1 and 10.2.
- Events of Default: MCE agreed to an additional cure period for one of the Event of Default, and agreed to a limited modification to a performance-related Event of Default. See Section 11.1.
- *Seller Pre-COD Liability:* To facilitate project financing, MCE added Section 11.6 to limit Seller's pre-COD liability in the event of a pre-COD default by Seller.
- Workforce and Prevailing Wage Requirements; Local Hire Requirement: The parties added addition clarifications and requirements to this provision. See Section 13.4
- Forced Labor: MCE added updated language around Seller obligations not to use materials or equipment that relies on forced labor. See Section 13.7.
- Assignment: MCE made edits to Section 14.1 (including adding definitions for "Change of Control" and "Ultimate Parent") and Section 14.2 to further clarify Buyer's and Seller's respective rights and obligations regarding assignments.
- Extension of Guaranteed Dates; Development Cure Period: MCE agreed to add additional specified circumstances for the Development Cure Period. See Exhibit B.
- *Seller Commitments:* MCE and Seller revised Exhibit O to specify Seller's commitments, including a pledge of community benefits.

• Other Minor, Non-Material Revisions: MCE made certain edits to correct typographical errors, and other clarifications, updates, and changes in its PPA, including adding projector Seller-specific details. MCE believes these additional revisions are not material and have not summarized them in the specific discussion points above.

COST RECOVERY

The DAC-GT and CS-GT programs are funded through a combination of Greenhouse Gas auction revenues and public purpose funds. MCE program costs, as set forth in its Annual Budget Advice Letter, are recovered as part of PG&E's annual Energy Resource Recovery Account (ERRA) proceedings. As directed in Res. E-5124, PG&E remits program funds to MCE in quarterly installments, by January 1, April 1, July 1, and October 1 of each year. 9

CONCLUSION

MCE respectfully requests that the Commission approve the Conflitti PPAs, to help facilitate the timely development of these projects.

NOTICE

A copy of this AL is being served on the official Commission service list for Rulemaking R.14-07-002.

For changes to this service list, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at Process Office@cpuc.ca.gov.

PROTESTS

Anyone wishing to protest this advice letter filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests must be submitted to:

CPUC, Energy Division Attention: Tariff Unit 505 Van Ness Avenue San Francisco, CA 94102

Email: EDTariffUnit@cpuc.ca.gov

Copies should also be mailed to the attention of the Deputy Executive Director, Energy Division, Room 4004 (same address above).

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⁸ D.18-06-027, pp. 54, 85.

⁹ Resolution E-5124, Ordering Paragraph 3.

In addition, protests and all other correspondence regarding this advice letter shall be sent by letter or transmitted electronically to the attention of:

Stephanie Chen Director of Legislative Affairs Marin Clean Energy 1125 Tamalpais Ave San Rafael, CA 94901

Email: schen@mcecleanenergy.org

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

CORRESPONDENCE

For questions, please contact Stephanie Chen at (415) 464-6664 or by electronic mail at schen@mcecleanenergy.org.

/s/ Stephanie Chen

Stephanie Chen
Director of Legislative Affairs
MARIN CLEAN ENERGY
1125 Tamalpais Avenue
San Rafael, CA 94901
Telephone: (415) 464-6664

Telephone. (115) 101 0001

Email: schen@mcecleanenergy.org

Attachments

Attachment A: Renewable Power Purchase Agreement between MCE and CES Electron

Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA

1")

Attachment B: Renewable Power Purchase Agreement between MCE and CES Electron

Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA

2")

Attachment C: Redline of Conflitti PPA 1
Attachment D: Redline of Conflitti PPA 2

Attachment E: Redline of Pro Forma Small Projects PPA

Attachment F: Confidentiality Declaration

cc: Service List for R.14-07-002





California Public Utilities Commission

ADVICE LETTER UMMARY



LIVEROTOTIETT			
MUST BE COMPLETED BY UT	ILITY (Attach additional pages as needed)		
Company name/CPUC Utility No.: Marin Clean 1	Energy ("MCE")		
Utility type: ✓ ELC GAS WATER PLC HEAT	Contact Person: Stephanie Chen Phone #: (415) 464-6664 E-mail: schen@mcecleanenergv.org E-mail Disposition Notice to: schen@mcecleanenergv.org		
EXPLANATION OF UTILITY TYPE ELC = Electric GAS = Gas WATER = Water PLC = Pipeline HEAT = Heat WATER	(Date Submitted / Received Stamp by CPUC) June 20, 2022		
Advice Letter (AL) #: 63-E	Tier Designation: 2		
	Green Tariff Program 2022 Power Purchase Agreement Approval		
Keywords (choose from CPUC listing): Solar, Con AL Type: Monthly Quarterly Annual			
	on order, indicate relevant Decision/Resolution #:		
Does AL replace a withdrawn or rejected AL? I	If so, identify the prior AL: $ m _{N/A}$		
Summarize differences between the AL and the prior withdrawn or rejected AL: $\mathrm{N/A}$			
Confidential treatment requested? 🔽 Yes 🗌 No			
If yes, specification of confidential information: See Attachment F Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information: Justin Wynne, wynne@braunlegal.com, (916) 326-5813			
Resolution required? Yes No			
Requested effective date: 7/20/22	No. of tariff sheets: $_{ m 0}$		
Estimated system annual revenue effect (%): $\mathrm{N/A}$			
Estimated system average rate effect (%): $\mathrm{N/A}$			
When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).			
Tariff schedules affected: $_{ m N/A}$			
Service affected and changes proposed $^{ ext{l:}}$ $_{ ext{N/N}}$	A		
Pending advice letters that revise the same tariff sheets: N/A			

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division Attention: Tariff Unit 505 Van Ness Avenue San Francisco, CA 94102

Email: <u>EDTariffUnit@cpuc.ca.gov</u>

Name: Stephanie Chen

Title: Director of Legislative Affairs Utility Name: Marin Clean Energy Address: 1125 Tamalpais Avenue

City: San Rafael

State: California Zip: 94901

Telephone (xxx) xxx-xxxx: (415) 464-6664

Facsimile (xxx) xxx-xxxx:

Email: schen@mcecleanenergy.org

Name:

Title:

Utility Name: Address:

City:

State: District of Columbia

Zip:

Telephone (xxx) xxx-xxxx: Facsimile (xxx) xxx-xxxx:

Email:

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtailable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

ATTACHMENT A

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

<u>Description of Facility</u>: 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 "<u>DAC</u>"), within PG&E's distribution service territory.

Milestones:

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

<u>Delivery Term</u>: 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%.

	degradation of 0.50%.			
Guaranteed Capacity: 4.4 MW				
Contract Price:				
Product:				
 ☒ Facility Energy ☒ Green Attributes (Portfolio Content Cate ☒ Capacity Attributes (select options below ☒ Energy Only Status ☒ Full Capacity Deliverability Status ☒ Ancillary Services 	w as applicable)			
Scheduling Coordinator: Buyer/Buyer Third Par	rty			
Development Security and Performance Securi	<u>tv</u>			
Development Security:				
Performance Security:				

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "<u>Agreement</u>") is entered into as of ______, 2022 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 <u>Contract Definitions</u>. 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.
- "<u>Agreement</u>" 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.
- "<u>Ancillary Services</u>" means all ancillary services, products and other attributes, if any, associated with the Facility.

"<u>Available Capacity</u>" 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.

"<u>Buyer Curtailment Order</u>" 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.

"<u>Buyer Curtailment Period</u>" 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; <u>provided</u> 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).

"<u>CAISO</u>" 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.

"<u>CEC</u>" 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
 - "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
 - "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 Cap" means the yearly quantity per Contract Year, in MWh, equal to

"Curtailment 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.
 - "<u>DAC</u>" has the meaning set forth on the Cover Sheet.
- "<u>DAC-GT</u>" means the Disadvantaged Communities Green Tariff (DAC-GT) program approved by the CPUC.
- "<u>Damage Payment</u>" means the dollar amount that equals the amount of the Development Security.
- "<u>Day</u>" or "<u>day</u>" 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.
 - "<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).
 - "Dedicated Interconnection Capacity" has the meaning set forth in Section 4.10.
- "<u>Deemed Delivered Energy</u>" 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.

- "<u>Delivery Point</u>" has the meaning set forth in <u>Exhibit A</u>.
- "<u>Delivery Term</u>" 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.
- "<u>Development Security</u>" 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.
- "<u>Effective FCDS Date</u>" 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.
- "<u>Electrical Losses</u>" 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.
- "<u>Facility</u>" means the electricity generating facility described on the Cover Sheet and in <u>Exhibit A</u>, 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.

"<u>Facility Meter</u>" 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.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Financial Close</u>" 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.

"<u>Forced Facility Outage</u>" 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.

"<u>Full Capacity Deliverability Status Finding</u>" 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.

"<u>Guaranteed Capacity</u>" 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
- "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 (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 $\underline{\text{Exhibit L}}$ 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.
- "<u>Initial Synchronization</u>" 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.

"<u>Interconnection Facilities</u>" 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.

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

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>Law</u>" 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.

"<u>Letter(s) of Credit</u>" 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 <u>Exhibit K</u>.

"<u>Licensed Professional Engineer</u>" 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.

"<u>Milestones</u>" 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.

"<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.

"<u>MWh</u>" 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).

"<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

"<u>Operating Procedures</u>" or "<u>Operating Restrictions</u>" 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.
- "<u>Performance Measurement Period</u>" 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.
- "<u>Permitted Transferee</u>" means and entity that has, or is controlled by another Person that satisfies the following requirements:
- (a) A tangible net worth of not less than 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.

"<u>PTC</u>" 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.

"<u>Real-Time Price</u>" 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.

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

"<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" 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.

"<u>Site</u>" means the necessary real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of <u>Exhibit J</u> 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.

"<u>Station Use</u>" 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.

"<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Tax Credits</u>" 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.

"<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2.

"<u>Termination Payment</u>" has the meaning set forth in Section 11.111.3.

"<u>Test Energy</u>" 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.

"<u>Test Energy Rate</u>" has the meaning set forth in Section 3.6.

"<u>Transmission System</u>" 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

"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).

"<u>WREGIS</u>" 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).

"<u>WREGIS Certificates</u>" 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;

- (1) "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 <u>Conditions Precedent</u>. 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 <u>CPUC Approval</u>. 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 <u>Development; Construction; Progress Reports</u>. 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 <u>Exhibit E</u>. 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 <u>Workforce Requirements</u>. 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 <u>Sale of Product</u>. 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 <u>Exhibit C</u>, 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 <u>Sale of Green Attributes</u>. 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 <u>Imbalance Energy</u>. 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 <u>Ownership of Renewable Energy Incentives</u>. 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 <u>Test Energy</u>. 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 <u>Capacity Attributes</u>. 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

; 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 <u>CEC Certification and Verification</u>. 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 <u>California Renewables Portfolio Standard.</u>

(a) <u>Eligibility</u>. 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) <u>Tracking of RECs in WREGIS</u>. 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) <u>Applicable Law</u>. 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.

- The Parties acknowledge that an essential purpose of this Agreement is to (a) 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) <u>Compliance Expenditure Cap</u>. 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

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(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

("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 "<u>Accepted Compliance Costs</u>"), 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) <u>Green Attributes</u>. 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) <u>Energy</u>. 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) <u>Green Attributes</u>. 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) <u>Monthly Forecast of Available Capacity</u>. 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 <u>Exhibit F-2</u> ("<u>Monthly Delivery Forecast</u>"), or as reasonably requested by Buyer.
- (c) <u>Day-Ahead Forecast</u>. 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 ("<u>Day-Ahead Forecast</u>"). 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) <u>Hourly and Sub-Hourly Forecasts.</u> 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) <u>Forecasting Penalties</u>. 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 "<u>Forecasting Penalty</u>") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.
- (f) <u>CAISO Tariff Requirements</u>. 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 <u>Dispatch Down/Curtailment</u>

- (a) <u>General</u>. 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, <u>provided</u> 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) <u>Buyer Curtailment.</u> 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) <u>Facility Maintenance</u>. 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 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such

maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "<u>Planned Outage</u>").

- (b) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.16.2.
- 4.6 <u>Scheduling Coordinator Responsibilities</u>. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in <u>Exhibit D</u>.
- 4.7 <u>WREGIS</u>. 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 <u>Guaranteed Energy Production</u>. 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 "<u>Adjusted Energy Production</u>"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with <u>Exhibit G.</u>
- 4.9 <u>Financial Statements</u>. 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 <u>Interconnection</u>. 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 <u>Green e-Certification</u>. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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

- 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit N</u> 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

- **Metering**. Seller shall measure the amount of Facility Energy using the Facility 7.1 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 <u>Invoicing</u>. 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 <u>Books and Records</u>. 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 <u>Billing Disputes</u>. 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

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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

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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 <u>Addresses for the Delivery of Notices</u>. 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 <u>Exhibit N</u> 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 <u>Exhibit N</u> 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.

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 <u>Notice for Force Majeure</u>. 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 <u>Termination Following Force Majeure Event</u>. 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 "<u>Defaulting Party</u>") 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 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 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
- (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 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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;

<u>provided</u>, 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.

- **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 <u>Notice of Payment of Termination Payment</u>. 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 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 <u>No Consequential Damages</u>. 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.
- 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 <u>Seller's Representations and Warranties</u>. 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 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>Seller Covenants</u>. 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) <u>Local Hire Requirement:</u> 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 "<u>Local Hire Requirement</u>"). 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) <u>Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats</u>. 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 15th 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 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 <u>Seller Commitments</u>. Seller shall comply with the Seller Commitments set forth in <u>Exhibit O</u> 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 <u>Diversity Reporting</u>. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as <u>Exhibit R</u>, 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 <u>Responsible Procurement</u>. 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 <u>General Prohibition on Assignments</u>. 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 <u>Collateral Assignment</u>. 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 <u>Permitted Assignment by Seller</u>. 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

- 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.
- 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 <u>Attorneys' Fees</u>. 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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.
- 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 <u>Article 16</u>, 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) <u>General Liability</u>. 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) <u>Construction All-Risk Insurance</u>. 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) <u>Contractor's Pollution Liability</u>. 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) <u>Subcontractor Insurance</u>. 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) <u>Umbrella/Excess Liability Insurance</u>. 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.
- 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

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.

- 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. 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 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>No Waiver</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. 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 <u>Further Assurances</u>. 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	MARIN CLEAN ENERGY, a California joint powers authority
By: Name: Title:	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**.

- "Construction Start" will occur upon satisfaction of the following: (i) Seller has a. 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.
- If Construction Start is not achieved by the Guaranteed Construction Start Date, b. 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. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 "<u>Commercial Operation Date</u>" 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. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation within 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. <u>Extension of the Guaranteed Dates</u>. 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 "<u>Development Cure Period</u>") 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.			
d.			

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed 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 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 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)	<u>Facility Energy.</u> Buyer shall pay Seller the Contract Price for each MW
of Product, as mea	sured by the amount of Facility Energy, up to
of the Expe	ected Energy for each Contract Year.
(b)	Annual Excess Energy. If, at any point in any Contract Year, the amoun
of Facility Energy	plus the amount of Deemed Delivered Energy above the Curtailment Ca
exceeds	of the Expected Energy for such Contract Year, th
price to be paid for	additional Facility Energy or Deemed Delivered Energy shall be equal to the
lesser of	

- (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) <u>Tax Credits</u>. 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

- Buyer as Scheduling Coordinator for the Facility. (a) 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) <u>Notices</u>. 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) <u>CAISO Costs and Revenues</u>. 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.

- CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for (d) 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) <u>Dispute Costs</u>. 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) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master Data File and Resource Data Template</u>. 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 a	dditiona	l rows fo	or each	day in th	ne mont	h]							•											
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:

<u>A</u> = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{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 (" <u>Certification</u> ") of Commercial Operation is delivered by [licensed professional engineer] (" <u>Engineer</u> ") to Marin Clean Energy, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Renewable Power Purchase Agreement dated (" <u>Agreement</u> ") 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 (" <u>Installed Capacity</u> ").								
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 ("Certif	ication ") of Installed	I Capacity is delivered by [licensed professional
engineer] ("Engineer") to	Marin Clean Energy,	, a California joint powers authority ("Buyer") in
accordance with the terr	ns of that certain	Renewable Power Purchase Agreement dated
("Agreement	<u>nt</u> ") by and between	CES Electron Farm One, LLC and Buyer. All
capitalized terms used in	this Certification by	ut not otherwise defined herein shall have the
respective meanings assign	ned to such terms in the	ne Agreement.
		lity demonstrated peak electrical output ofMW ent conditions on the date of the performance test
EXECUTED by [LICENS]	ED PROFESSIONAI	L ENGINEER]
this day of	, 20	
		[LICENSED PROFESSIONAL ENGINEER]
		Sign:
		Print:
		Title:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

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

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. \$[XXXXXX] (United States Dollars [XXXXX] 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) 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-XXXX-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 join 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 [authority], a [] (" <u>Guarantor</u> "), and Marin Clean Energy, a California joint powers (together with its successors and permitted assigns, " <u>Buyer</u> ").
	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
В.	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.
	<u>Agreement</u>
prompt pa from Sell Payment, of the PP arising ou understan Amount s for-dollar of the ful Amount a requireme any other means of completel shall prom	y guarantee, as primary obligor and not as a surety, to Buyer the full, complete and syment by Seller of any and all amounts and payment obligations now or hereafter owing er to Buyer under the PPA, including compensation for penalties, the Termination indemnification payments or other damages, as and when required pursuant to the terms A (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or at of this Guaranty shall not exceed Dollars (\$). The Parties d and agree that any payment by Guarantor or Seller of any portion of the Guaranteed hall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee I and punctual payment and performance, and not of collection, of the Guaranteed nd, except as otherwise expressly addressed herein, is in no way conditioned upon any but that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, guarantor of the Guaranteed Amount or any other Person or entity or resort to any other obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, yor punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor aptly pay such amount as required herein.

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 "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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, statue or regulation, in each such event in any such proceeding, or
 - (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
 - (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
 - (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

<u>provided</u> 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:

EXHIBIT M

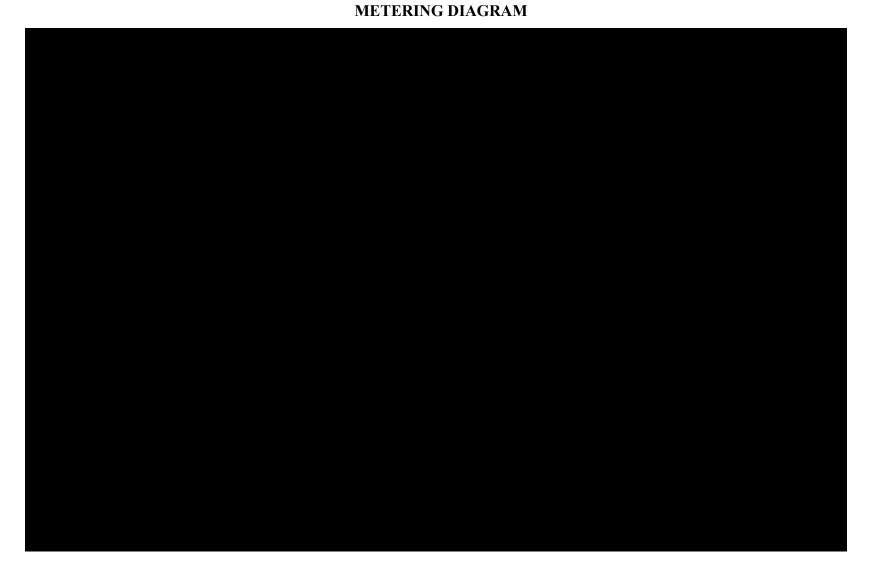


EXHIBIT N

NOTICES

CES ELECTRON FARM ONE, LLC	MARIN CLEAN ENERGY, a California
("Seller")	joint powers authority ("Buyer")
All Notices:	All Notices:
	Marin Clean Energy
Street: 1808 Wedemeyer St, Suite 221	1125 Tamalpais Avenue
City: San Francisco, CA, 94122	San Rafael, CA 94901
Attn: Asset Management	Attn: Contract Administration
Phone: 248-808-2015	Phone: (415) 464-6010
Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Reference Numbers:	Reference Numbers:
Duns:	Duns: 829602338
Federal Tax ID Number: 84-4804147 (Parent)	Federal Tax ID Number: 26-4300997
Invoices:	Invoices:
Attn: Accounts Payable	Attn: Power Settlement Analyst
Phone: 248-808-2015	Phone: (415) 464-6683
Email: accounting@whitepinerenew.com	Email: Settlements@mcecleanenergy.org
Scheduling:	Scheduling:
Attn: Scheduling	Attn: ZGlobal
Phone: 248-808-2015	Phone: (916) 458-4080
Email: chris.woodington@whitepinerenew.com	Email: dascheduler@zglobal.biz
Confirmations:	Confirmations:
Attn: CEO	Attn: Director of Power Resources
Phone: 248-808-2015	Phone: (415) 464-6685
Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Payments:	Payments:
Attn: Accounts Receivable	Attn: Power Settlement Analyst
Phone: 248-808-2015	Phone: (415) 464-6683
Email: <u>accounting@whitepinerenew.com</u>	Email: Settlements@mcecleanenergy.org
Wire Transfer:	Wire Transfer:
With additional Notices of an Event of Default	With additional Notices of an Event of
to:	Default to:
Attn: Jordan Dansby	Hall Energy Law PC
Phone: 703-618-0851	Attn: Stephen Hall
Email: jordan@cleanenergycounsel.com	Phone: (503) 313-0755
	Email: steve@hallenergylaw.com
Emergency Contact:	Emergency Contact:
Attn: Emergency	Attn:
Phone: 248-808-2015	Phone:
Email: evan@whitepinerenew.com	Email:

EXHIBIT O

SELLER COMMITMENTS

Seller to check as applicable (collectively, the "Seller Commitments"):

CalEnviroScreen 4.0 (or the latest version) Tool;

X

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

Participation of contractors or subcontractors or businesses that are Veteran-owned;

- 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



clovers and other non-native, non-invasive species beneficial to pollinators

Northern California / Oregon Pollinator-friendly solar scorecard

	5.8/	d for what constitutes "beneficial to ape of a PV solar facility.		
1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE 6. SITE PLANNING AND MANAGEMENT				
DOMINATED BY POLLINATOR-FRIENDLY	WILDFLOWERS	☐ Detailed establishment and		
☐ 31-45 %	+5 points	management plan developed with funding/	+ 15 points	
46-60 %	+10 points	contract to implement.		
☐ 61+ %	+15 points	☐ Signage legible from a distance of		
Total points		40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.).	+5 points	
Note: Projects may have "array" mixes and diversiborder mixes; forb dominance should be average site. The dominance should be calculated from the seeds vs. grass seeds (from all seed mixes) to be	ed across the entire otal numbers of forb	7. RE-VEGETATION Total points Seed is applied at 50 PLS (Pure Live Seed)		
2. PLANNED % OF SITE DOMINATED BY	NATIVE SPECIES	per square foot	+5 points	
COVER ☐ 26-50%	+5 points	20% or more of the native species' seed has a local genetic origin within 175	+5 points	
□ 51-75%.	+10 points	miles of the site For sites located 5 miles or further east		
76-100%	+15 points	of the coastline, re-vegetation includes	+10 points	
Total points		1% native milkweed Total points		
3. PLANNED SPECIES DIVERSITY (total #	of species in	8. PESTICIDE RISK		
re-vegetation, including native grasses)	or species in	Planned on-site insecticide use or use	-40 points	
		of plant material pre-treated with	-40 points	
9-11 species	+5 points	insecticides (excluding buildings/		
12-15 species	+10 points	electrical boxes, etc.)		
☐ 16 or more species	+15 points	Perpetual bare ground under the	Di	
Total points		panels due to ongoing herbicide treatment (beyond site preparations),	-40 points	
Note: exclude invasives from species totals.		no re-vegetation planned, or gravel	To points	
4. PLANNED SEASONS WITH AT LEAST 3		installation		
SPECIES PRESENT (check all that apply)		Communication/registration with Local	+10 points	
Spring (March-May)	+5 points	L chemical applicators about need to		
Summer (June-August)	+5 points	prevent drift from adjacent areas Total points		
Fall (September-November)	+5 points			
Winter (December-February)	+5 points	9. OUTREACH/EDUCATION		
Total points		Site is part of a study with a university, research lab, or conservation	+5 points	
Note: Check local resources for data on bloor	n seasons	organization		
5. ADDITIONAL HABITAT COMPONENTS	WITHIN .25	Grand total		
MILES (check all that apply)		Duraido Furantianal Habitat	- 05	
Native bunch grasses, leaf litter,	+2 points	Provides Exceptional Habitat Meets Pollinator Standards	>85	
woody debris, bare ground Native trees/shrubs	+2 points	recess commuter standards	70-84	
Clean, perennial water sources	+2 points	Project Name:		
☐ Created nesting feature(s)	+2 points	Vegetation Consultant:		
(i.e., native bee houses) Total points		Project Location:		
***	3	Total acres (array and open area):		
		Projected Seeding Date:		
Note: Percent "cover" should be based on the percent of the groom above. Wildflowers in question 1 refer to "forbs" (flowers of the proposition of the percent of the grown of the grown of the percent of the grown of the grow	ng plants that are not woody or grai	vertical projection of foliage as viewed minoids) and can include introduced PARTNERSHIE		

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 *
2.	Business Name *
3.	Where is your business located/headquartered? *
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 an
	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 Mark only one oval.
	Yes
	Qualified as WMDVLGBTBEs but not GO 156 Certified

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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	
	STORY CONTRACTOR OF THE PROPERTY OF THE PROPER	

8. If certified, current annual revenue:

Mark only one oval.		
	Under \$1 million	
	Under \$5 million	
	Under \$10 million	
	Above \$10 million	

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.thesupplierclearinghouse.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

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39 Miscellaneous manufacturing industries 41 Local and interurban passenger transit

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 tradedurable goods
	51 Wholesale tradenondurable 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

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5/11

10/9/2020		MCE Supplier Diversity Questionnaire		
	88 Private hou	seholds		
	89 Miscellane	ous services		
	91 Executive, legislative, and general government			
	92 Justice, public order, and safety			
	93 Finance, taxation, and monetary policy			
94 Administration of		tion of human resources		
95 Environmental quality and housing		ntal quality and housing		
96 Administration of economic programs		tion of economic programs		
	97 National se	curity and international affairs		
10.	The second secon	s is majority women, minority, disabled veteran, or LGBT owned, but tified, please explain why your business has not gone through the ocess.		
		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."		
Sub	ocontractors	*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 busined recent contract Mark only one of Yes No			
	Not applica	able		

12.	certified sub products or products (b	ered yes to the previous question, please provide a list of those occontractors, the anticipated subcontract amount, and if this is for services. Example: Electrical Design Technology, Inc.; \$100,000, atteries). Please provide information only on subcontractors you intend his recent MCE contract.
13.	and the second second	, please describe any hiring targets your business has for minority- nen-owned, LGBTQ-owned, or disabled veteran-owned fors.
sex,	color, ethnici	osition 209, MCE does not give preferential treatment based on race, ity, or national origin. Providing information in these categories is not impact the selection process.
La	bor	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

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applicable."

Agreements

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-tride 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.
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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7.	If you answered "uses California-based labor, but not local to MCE service area,"
	from where in California is the labor sourced?
8.	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
	Mark only one oval.
	Yes, including for this contract with MCE
	Yes, but not for this contract with MCE
	No
	Not applicable
	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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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.

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FIRST AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT

This **FIRST AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT** (this "<u>Amendment</u>") effective as of June 17, 2022 ("<u>Effective Date</u>"), is made between CES Electron Farm One, LLC ("<u>Seller</u>") and Marin Clean Energy, a California joint powers authority ("<u>MCE</u>" or "<u>Buyer</u>"). Seller and Buyer are referred to individually as a "<u>Party</u>" or collectively as the "<u>Parties</u>".

RECITALS

WHEREAS, the Parties entered into that certain Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement, dated March 20, 2022, as amended or amended and restated from time to time (the "Agreement");

WHEREAS, the California Public Utilities Commission ("CPUC") has recently affirmed its understanding that certain standard contract terms must be included by all retail sellers, including CCAs such as MCE, without modification in every contract used for compliance with California's Renewables Portfolio Standard program; and

WHEREAS, the Parties desire to amend the Agreement on the terms and conditions contained herein to conform to the non-modifiable standard contract terms.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Amendments to the Agreement.

(a) The Parties hereby agree that the following provisions are added to the Agreement:

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

"Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or

misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]."

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

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

(b) The provisions set forth in Section 1(a) above shall be deemed to be controlling in the event of a conflict with any similar prior language in the Agreement.

2. General.

- a. <u>Agreement Otherwise Not Affected</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- b. <u>Entire Agreement</u>. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.
- c. <u>Binding Effect</u>. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.
- d. <u>Governing Law.</u> THIS AMENDMENT 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.
- e. <u>Counterparts</u>. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed signature page of this Amendment as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.
- f. <u>Reservation of Rights</u>. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the Effective Date.

CES Electron Farm One, LLC

l t
Sign: Evan Kiley
Managing Member Title:
6/9/2022 Date:

Marin Clean Energy, a California joint powers authority

	DocuSigned by:	
	Dawn Weisz A5C8A10930544DC	
Sign:_	A5C8A10930544DC	
	CEO	
Title:		
	6/8/2022	
Date:		

ATTACHMENT B

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

<u>Description of Facility</u>: 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 "<u>DAC</u>"), within PG&E's distribution service territory.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	5/29/2019
Documentation of Conditional Use Permit if required: [X] CEQA, [] Cat Ex, [] Neg Dec, [X] Mitigated Neg Dec, [] EIR	10/31/2022
Executed Interconnection Agreement	12/15/2022
Financial Close	3/31/2022
Expected Construction Start Date	8/1/2023
Initial Synchronization	8/1/2023
Network Upgrades completed	N/A
Expected Commercial Operation Date	12/31/2023

<u>Delivery Term</u>: The period for Product delivery will be for twenty (20) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1 - 20	668 MWh in Contract Year 1, and subject to annual degradation of 0.50%

Guaranteed Capacity: 0.24 MW

Contract Price:			
Product:			
 ☒ Facility Energy ☒ Green Attributes (Portfolio Content Category 1) ☒ Capacity Attributes 			
Development Security and Performance Security			
Development Security:			
Performance Security:			

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "<u>Agreement</u>") is entered into as of ______, 2022 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 <u>Contract Definitions</u>. 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.
- "<u>Agreement</u>" 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.
- "<u>Available Capacity</u>" 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.

"Buver" 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; <u>provided</u> 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.

"<u>CAISO Tariff</u>" 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.

"<u>CEC</u>" 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

"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

"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.

"<u>CPUC</u>" 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.
 - "<u>DAC</u>" has the meaning set forth on the Cover Sheet.
- "<u>DAC-GT</u>" means the Disadvantaged Communities Green Tariff (DAC-GT) program approved by the CPUC.
- "<u>Damage Payment</u>" means the dollar amount that equals the amount of the Development Security.
- "<u>Day</u>" or "<u>day</u>" 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.
- "<u>Deemed Delivered Energy</u>" 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 <u>Exhibit F</u>, 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).
 - "<u>Deficient Month</u>" 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.

- "<u>Delivery Term</u>" 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.
 - "<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.
- "<u>Development Security</u>" 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.
- "<u>Electrical Losses</u>" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.
- "<u>Eligible Renewable Energy Resource</u>" 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.
- "<u>Facility</u>" means the electricity generating facility described on the Cover Sheet and in <u>Exhibit A</u>, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.
- "<u>Facility Energy</u>" 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.
- "<u>Facility Meter</u>" 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.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Financial Close</u>" 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.

"<u>Forced Facility Outage</u>" 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.

"<u>Guaranteed Construction Start Date</u>" 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

"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 (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.

"<u>Guaranty</u>" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as <u>Exhibit L</u> 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.

"<u>Initial Synchronization</u>" 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.

"<u>Interconnection Facilities</u>" 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.

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>Law</u>" 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.

"<u>Letter(s) of Credit</u>" 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.

"<u>Licensed Professional Engineer</u>" 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.

"<u>Milestones</u>" 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.

"<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.

"<u>MWh</u>" 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).
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
- "<u>Operating Procedures</u>" or "<u>Operating Restrictions</u>" 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.
- "<u>Permitted Transferee</u>" means and entity that has, or is controlled by another Person that satisfies the following requirements:
- (a) A tangible net worth of not less than 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.

"<u>PTC</u>" 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.

"<u>S&P</u>" 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.
- "<u>Site</u>" means the necessary real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of <u>Exhibit J</u> 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.
- "<u>Station Use</u>" 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.
- "<u>Tax</u>" or "<u>Taxes</u>" 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.
- "<u>Tax Credits</u>" 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.
 - "<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2.
 - "Termination Payment" has the meaning set forth in Section 11.3.
- "<u>Transmission System</u>" means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point.

"Ultimate Parent" means

"<u>WREGIS</u>" 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).

"<u>WREGIS Certificates</u>" 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.

"<u>WREGIS Operating Rules</u>" 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;
 - (1) "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 <u>Conditions Precedent</u>. 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 <u>CPUC Approval</u>. 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 <u>Workforce Requirements</u>. 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 <u>Sale of Product</u>. 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 <u>Exhibit C</u>, 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 <u>Sale of Green Attributes</u>. 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 <u>Future Environmental Attributes</u>

- (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 <u>Capacity Attributes</u>. 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 <u>CEC Certification and Verification</u>. 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 <u>California Renewables Portfolio Standard.</u>

- (a) <u>Eligibility</u>. 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) <u>Transfer of Renewable Energy Credits</u>. 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 08-028, 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) <u>Tracking of RECs in WREGIS</u>. 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) <u>Applicable Law</u>. 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.

- The Parties acknowledge that an essential purpose of this Agreement is to (a) 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

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) <u>Green Attributes</u>. 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 <u>Title and Risk of Loss.</u>

- (a) <u>Energy</u>. 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) <u>Green Attributes</u>. 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 <u>Forecasting</u>. 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) <u>Annual Forecast of Expected Energy</u>. 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 <u>Dispatch Down/Curtailment</u>

- (a) <u>General</u>. 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, <u>provided</u> 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) <u>Buyer Curtailment.</u> 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) <u>Facility Maintenance</u>. 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 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "Planned Outage").
- (b) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. 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 <u>WREGIS</u>. 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.

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- (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 <u>Guaranteed Energy Production</u>. 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 "<u>Adjusted Energy Production</u>"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with <u>Exhibit G.</u>
- 4.9 <u>Financial Statements</u>. 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 <u>Interconnection</u>. 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 "<u>Dedicated Interconnection Capacity</u>").
- 4.11 <u>Green e-Certification</u>. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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 <u>Allocation of Taxes and Charges</u>. 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit N</u> 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

- 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 <u>Meter Verification</u>. 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 <u>Invoicing</u>. 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 <u>Books and Records</u>. 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 <u>Billing Disputes</u>. 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.
- 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 <u>Seller's Performance Security</u>. 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

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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 <u>Addresses for the Delivery of Notices</u>. 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 <u>Exhibit N</u> 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 <u>Exhibit N</u> 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 <u>Exhibit N</u>.
- 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.
- 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 <u>Notice for Force Majeure</u>. 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 <u>Termination Following Force Majeure Event</u>. 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 "<u>Defaulting Party</u>") 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 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 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 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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;

<u>provided</u>, 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.

- **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 <u>Notice of Payment of Termination Payment</u>. 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 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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.
- 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 <u>Seller's Representations and Warranties</u>. 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 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>Seller Covenants</u>. 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) <u>Local Hire Requirement:</u> 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 "<u>Local Hire Requirement</u>"). 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) <u>Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats</u>. 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 15th 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 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 <u>Seller Commitments</u>. Seller shall comply with the Seller Commitments set forth in <u>Exhibit O</u> 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 <u>Diversity Reporting</u>. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as <u>Exhibit R</u>, 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 <u>Responsible Procurement</u>. 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 ("<u>Forced Labor</u>"). 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 <u>General Prohibition on Assignments</u>. 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 <u>Collateral Assignment</u>. 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 ("<u>Collateral Assignment Agreement</u>"). 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 <u>Permitted Assignment by Seller</u>. 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

- 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.
- 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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.
- 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 <u>Insurance</u>.

- (a) <u>General Liability</u>. 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) <u>Construction All-Risk Insurance</u>. 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) <u>Contractor's Pollution Liability</u>. 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) <u>Subcontractor Insurance</u>. 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) <u>Umbrella/Excess Liability Insurance</u>. 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.
- 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

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.

- 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. 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 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>No Waiver</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. 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 <u>Further Assurances</u>. 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	MARIN CLEAN ENERGY, a California joint powers authority
By: Name: Title:	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: 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. <u>Construction of the Facility</u>.

- "Construction Start" will occur upon satisfaction of the following: (i) Seller has a. 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.
- If Construction Start is not achieved by the Guaranteed Construction Start Date, b. 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. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 "<u>Commercial Operation Date</u>" 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. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation within 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. <u>Extension of the Guaranteed Dates</u>. 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 "<u>Development Cure Period</u>") 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.		
d.		

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed 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 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 Guaranteed 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 <u>Exhibit C</u>.

of Product, as measured by the amount of Facility Energy and Deemed Delivered Energy, if any,

(a)

Facility Energy. Buyer shall pay Seller the Contract Price for each MWh

up to	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
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

- (c) <u>Excess Settlement Interval Deliveries</u>. 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 ("<u>Excess MWh</u>"), then the price applicable to all such excess MWh in such measurement period shall be Zero Dollars (\$0).
- (d) <u>Tax Credits</u>. 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:

<u>A</u> = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{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 (" <u>Certification</u> ") of Commercial Operation is delivered by [licensed professional engineer] (" <u>Engineer</u> ") to Marin Clean Energy, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Renewable Power Purchase Agreement dated (" <u>Agreement</u> ") 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 (" <u>Installed Capacity</u> ").
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:

Title:

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This cert	ification ("Certifica	tion") of Installed	l Capacity is delivered by [licensed professional
engineer]	(" <u>Engineer</u> ") to M	arin Clean Energy	, a California joint powers authority ("Buyer") in
accordan	ce with the terms	of that certain	Renewable Power Purchase Agreement dated
	("Agreement") by and between	CES Electron Farm One, LLC and Buyer. All
capitalize	ed terms used in th	is Certification b	ut not otherwise defined herein shall have the
respectiv	e meanings assigned	to such terms in the	he Agreement.
AC at the			lity demonstrated peak electrical output of MW ent conditions on the date of the performance test
EXECUT	TED by [LICENSED	PROFESSIONAL	L ENGINEER]
this	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER]
			Sign:
			Print:
			Title:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
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. \$[XXXXXX] (United States Dollars [XXXXX] 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-XXXX-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 join 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 [authority], a [] (" <u>Guarantor</u> "), and Marin Clean Energy, a California joint powers (together with its successors and permitted assigns, " <u>Buyer</u> ").
	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
В.	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.
	<u>Agreement</u>
prompt pa from Sell Payment, of the PP arising ou understan Amount s for-dollar of the ful Amount a requirement any other means of completel shall prom	guaranty. For value received, Guarantor does hereby unconditionally, absolutely and y guarantee, as primary obligor and not as a surety, to Buyer the full, complete and yment by Seller of any and all amounts and payment obligations now or hereafter owing er to Buyer under the PPA, including compensation for penalties, the Termination indemnification payments or other damages, as and when required pursuant to the terms A (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or it of this Guaranty shall not exceed Dollars (\$). The Parties d and agree that any payment by Guarantor or Seller of any portion of the Guaranteed hall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee 1 and punctual payment and performance, and not of collection, of the Guaranteed nd, except as otherwise expressly addressed herein, is in no way conditioned upon any but that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, guarantor of the Guaranteed Amount or any other Person or entity or resort to any other obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, yor punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor aptly pay such amount as required herein.

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 "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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, statue or regulation, in each such event in any such proceeding, or
 - (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
 - (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
 - (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

<u>provided</u> 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

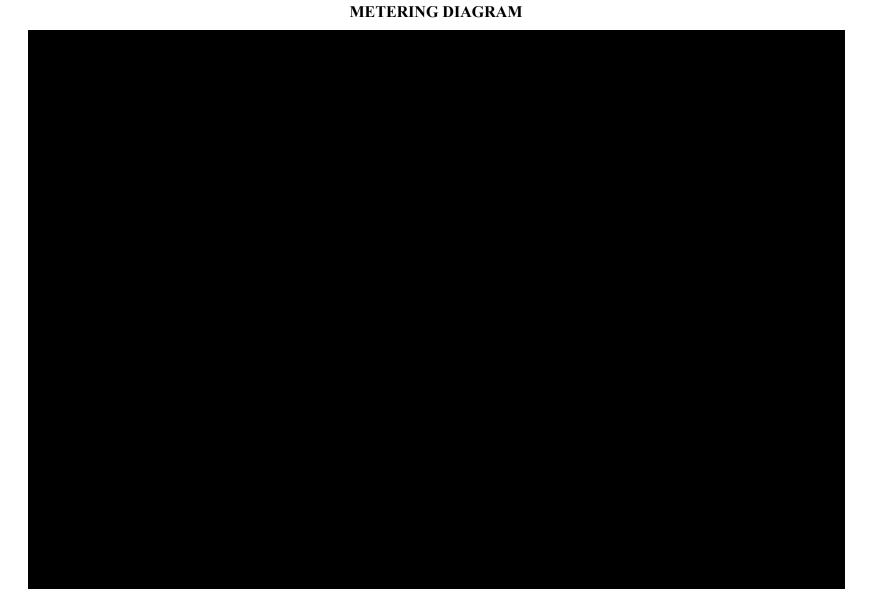
and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic 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.

By:
Printed Name:
Title:
BUYER:
By:
Printed Name:
Printed Name: Title:
Printed Name:
Printed Name: Title:
Printed Name: Title: By:

EXHIBIT M



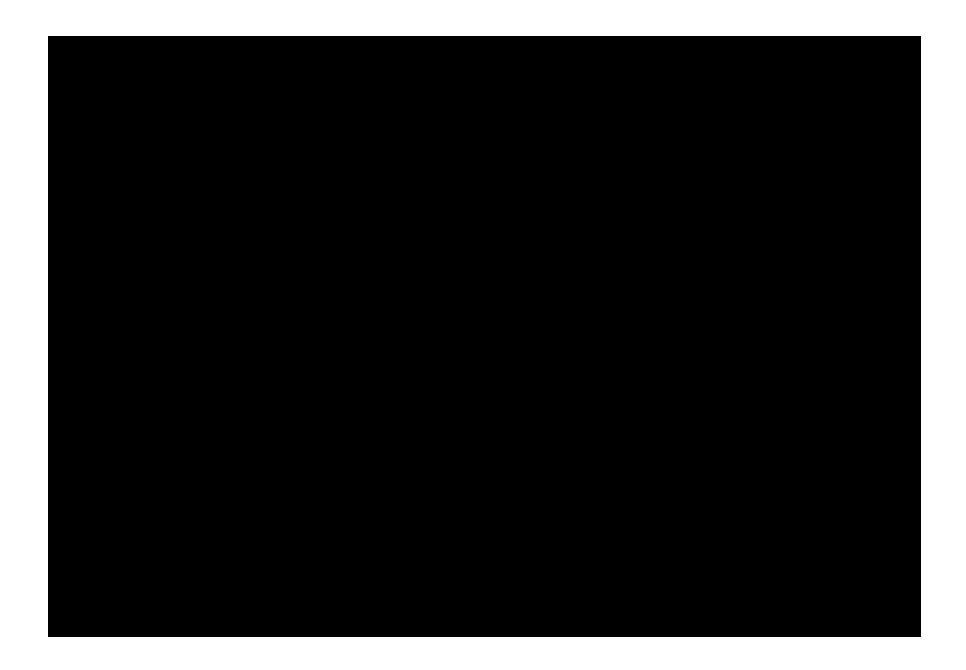


EXHIBIT N

NOTICES

CES ELECTRON FARM ONE, LLC	MARIN CLEAN ENERGY, a California
("Seller")	joint powers authority ("Buyer")
All Notices:	All Notices:
	Marin Clean Energy
Street: 1808 Wedemeyer St, Suite 221	1125 Tamalpais Avenue
City: San Francisco, CA, 94122	San Rafael, CA 94901
Attn: Asset Management	Attn: Contract Administration
Phone: 248-808-2015	Phone: (415) 464-6010
Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Reference Numbers:	Reference Numbers:
Duns:	Duns: 829602338
Federal Tax ID Number: 84-4804147 (Parent)	Federal Tax ID Number: 26-4300997
Invoices:	Invoices:
Attn: Accounts Payable	Attn: Power Settlement Analyst
Phone: 248-808-2015	Phone: (415) 464-6683
Email: accounting@whitepinerenew.com	E-mail: Settlements@mcecleanenergy.org
Scheduling:	Scheduling:
Attn: Scheduling	Attn: ZGlobal
Phone: 248-808-2015	Phone: (916) 458-4080
Email: chris.woodington@whitepinerenew.com	E-mail: dascheduler@zglobal.biz
Confirmations:	Confirmations:
Attn: CEO	Attn: Director of Power Resources
Phone: 248-808-2015	Phone: (415) 464-6685
Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Payments:	Payments:
Attn: Accounts Receivable	Attn: Power Settlement Analyst
Phone: 248-808-2015	Phone: (415) 464-6683
Email: accounting@whitepinerenew.com	E-mail: <u>Settlements@mcecleanenergy.org</u>
Wire Transfer:	Wire Transfer:
With additional Notices of an Event of Default	With additional Notices of an Event of
to:	Default to:
Attn: Jordan Dansby	Hall Energy Law PC
Phone: 703-618-0851	Attn: Stephen Hall
Email: jordan@cleanenergycounsel.com	Phone: (503) 313-0755
	Email: steve@hallenergylaw.com
Emergency Contact:	Emergency Contact:
Attn: Emergency	Attn:
Phone: 248-808-2015	Phone:
Email: evan@whitepinerenew.com	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



clovers and other non-native, non-invasive species beneficial to pollinators

Northern California / Oregon Pollinator-friendly solar scorecard

	5.50/	d for what constitutes "beneficial to ape of a PV solar facility.	
1. PERCENT OF PROPOSED SITE VEGETA	TION COVER TO BE	6. SITE PLANNING AND MANAGEMENT	
DOMINATED BY POLLINATOR-FRIENDLY	WILDFLOWERS	☐ Detailed establishment and	
☐ 31-45 %	+5 points	management plan developed with funding/	+ 15 points
46-60 %	+10 points	contract to implement.	
☐ 61+ %	+15 points	☐ Signage legible from a distance of	
Total points		40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.).	+5 points
Note: Projects may have "array" mixes and diversiborder mixes; forb dominance should be average site. The dominance should be calculated from the seeds vs. grass seeds (from all seed mixes) to be	ed across the entire otal numbers of forb	7. RE-VEGETATION Total points Seed is applied at 50 PLS (Pure Live Seed)	- F mainte
2. PLANNED % OF SITE DOMINATED BY	NATIVE SPECIES	per square foot	+5 hours
COVER ☐ 26-50%	+5 points	20% or more of the native species' seed has a local genetic origin within 175	+5 points
□ 51-75%.	+10 points	miles of the site For sites located 5 miles or further east	
76-100%	+15 points	of the coastline, re-vegetation includes	+10 points
Total points		1% native milkweed Total points	
3. PLANNED SPECIES DIVERSITY (total #	of species in	8. PESTICIDE RISK	
re-vegetation, including native grasses)	or species in	Planned on-site insecticide use or use	-40 points
		of plant material pre-treated with	-40 points
9-11 species	+5 points	insecticides (excluding buildings/	
12-15 species	+10 points	electrical boxes, etc.)	
☐ 16 or more species	+15 points	Perpetual bare ground under the	200
Total points		panels due to ongoing herbicide treatment (beyond site preparations),	-40 points
Note: exclude invasives from species totals.		no re-vegetation planned, or gravel	10.00 M 10.00 M
4. PLANNED SEASONS WITH AT LEAST 3		installation	
SPECIES PRESENT (check all that apply)		Communication/registration with Local	+10 points
Spring (March-May)	+5 points	chemical applicators about need to prevent drift from adjacent areas	
Summer (June-August)	+5 points	Total points	
Fall (September-November)	+5 points		
☐ Winter (December-February)	+5 points	9. OUTREACH/EDUCATION	
Total points		Site is part of a study with a university, research lab, or conservation	+5 points
Note: Check local resources for data on bloor	m seasons	organization	
5. ADDITIONAL HABITAT COMPONENTS	WITHIN .25	Grand total	
MILES (check all that apply)		Provides Exceptional Habitat	>85
Native bunch grasses, leaf litter, woody debris, bare ground	+2 points		70-84
Native trees/shrubs	+2 points		70-04
Clean, perennial water sources	+2 points	Project Name:	
Created nesting feature(s)	+2 points	Vegetation Consultant:	
(i.e., native bee houses) Total points		Project Location:	
		Total acres (array and open area):	
		Projected Seeding Date:	
Note: Percent "cover" should be based on the percent of the g from above. Wildflowers in question 1 refer to "forbs" (flowers	ng plants that are not woody or gra	vertical projection of foliage as viewed minoids) and can include introduced 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 *
2.	Business Name *
3.	Where is your business located/headquartered? *
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 an
	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 Mark only one oval.
	Yes
	No Qualified as WMDVLGBTBEs but not GO 156 Certified

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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	

8. If certified, current annual revenue:

Mark only one oval.		
	Under \$1 million	
	Under \$5 million	
	Under \$10 million	
	Above \$10 million	

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.thesupplierclearinghouse.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

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39 Miscellaneous manufacturing industries 41 Local and interurban passenger transit

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 tradedurable goods
	51 Wholesale tradenondurable 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

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10/9/2020		MCE Supplier Diversity Questionnaire
ĵ	88 Private hou	seholds
	89 Miscellane	ous 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 se	curity and international affairs
10.	The second secon	is majority women, minority, disabled veteran, or LGBT owned, but tified, please explain why your business has not gone through the ocess.
		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."
Sub	ocontractors	*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.
	recent contract	
Mark only one oval. Yes No		val.
	Not applica	able

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.		
 If applicable, please describe any hiring targets your business has for m owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors. 		nen-owned, LGBTQ-owned, or disabled veteran-owned	
sex,	color, ethnici	osition 209, MCE does not give preferential treatment based on race, ity, or national origin. Providing information in these categories is not impact the selection process.	
La	bor	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	

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applicable."

Agreements

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-tride 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.
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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17. If you answered "uses California-based labor, but not local to MCE service		
	from where in California is the labor sourced?	
3.	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	
	Mark only one oval.	
	Yes, including for this contract with MCE	
	Yes, but not for this contract with MCE	
	No	
	Not applicable	
	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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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.

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FIRST AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT

This **FIRST AMENDMENT TO DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT** (this "<u>Amendment</u>") effective as of June 17, 2022 ("<u>Effective Date</u>"), is made between CES Electron Farm One, LLC ("<u>Seller</u>") and Marin Clean Energy, a California joint powers authority ("<u>MCE</u>" or "<u>Buyer</u>"). Seller and Buyer are referred to individually as a "<u>Party</u>" or collectively as the "<u>Parties</u>".

RECITALS

WHEREAS, the Parties entered into that certain Disadvantaged Communities Green Tariff (DAC-GT) Renewable Power Purchase Agreement, dated March 22, 2022, as amended or amended and restated from time to time (the "Agreement");

WHEREAS, the California Public Utilities Commission ("CPUC") has recently affirmed its understanding that certain standard contract terms must be included by all retail sellers, including CCAs such as MCE, without modification in every contract used for compliance with California's Renewables Portfolio Standard program; and

WHEREAS, the Parties desire to amend the Agreement on the terms and conditions contained herein to conform to the non-modifiable standard contract terms.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, as well as the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Amendments to the Agreement.

(a) The Parties hereby agree that the following provisions are added to the Agreement:

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

"Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or

misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]."

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

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

(b) The provisions set forth in Section 1(a) above shall be deemed to be controlling in the event of a conflict with any similar prior language in the Agreement.

2. General.

- a. <u>Agreement Otherwise Not Affected</u>. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.
- b. <u>Entire Agreement</u>. This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication or prior writings related thereto.
- c. <u>Binding Effect</u>. This Amendment shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.
- d. <u>Governing Law.</u> THIS AMENDMENT 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.
- e. <u>Counterparts</u>. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed signature page of this Amendment as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.
- f. <u>Reservation of Rights</u>. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed as of the Effective Date.

CES Electron Farm One, LLC

	DocuSigned by:	
	Evan Riley	
Sign:	Evan Kiley	
	Evan Riley	
Print:		
Title:	Managing Member	

Marin Clean Energy, a California joint powers authority

	DocuSigned by:	
Sign:_	Dawn Weisz	
Print:	Dawn Weisz	
Title:	CEO	

ATTACHMENT C

DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Entity name, state of formation, type of entity] CES Electron Farm One, LLC

Buver: Marin Clean Energy, a California joint powers authority

<u>Description of Facility</u>: A <u>4.4</u> MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen <u>34.0</u> (or the latest version) tool (such community, a "<u>DAC</u>"), within PG&E's distribution service territory.

Milestones:

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

<u>Delivery Term</u>: The period for Product delivery will be for <u>()twenty (20)</u> Contract Years.

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Expected Energy:

Contract Year	Expected Energy (MWh)
1 -XX 20	[If there is an 12,254 MWh in Contract Year 1, and subject to annual adjustment for
	degradation, this should be
	moted.] of 0.50%.

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Guaranteed Capacity: —4.4 MW [Guaranteed Capacity must not be less than 0.5 MW nor exceed 4.64 MW.]

Contract Price: shall be \$[XX]/MWh. [Per MCE Advice Letter 12 E, "bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC's Energy Division Staff via cmail on September 5, 2019".]Contract Price:

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:

Performance Security:

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security:

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Exhibits:

Exhibit A Facility Description Exhibit B Facility Construction and Commercial Operation Exhibit C Compensation Exhibit D Scheduling Coordinator Responsibilities Exhibit E Form of Progress Report Exhibit F-1 Form of Average Expected Energy Report Exhibit F-2 Form of Monthly Available Capacity Report Exhibit G Guaranteed Energy Production Damages Calculation Exhibit H Form of Commercial Operation Date Certificate Exhibit I Form of Installed Capacity Certificate Form of Construction Start Date Certificate Exhibit J Form of Letter of Credit Exhibit K Exhibit L Form of Guaranty Exhibit M Metering Diagram Exhibit N Notices

Exhibit O Seller Commitments
Exhibit P Pollinator Scorecard
Exhibit Q Operating Restrictions
Exhibit R Diversity Reporting

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "<u>Agreement</u>") is entered into as of ______, 20212022 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 <u>Contract Definitions</u>. 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 "Bankruptev" 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).

"<u>CAISO</u>" 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.

"<u>CAISO Tariff</u>" 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.

" $\underline{\text{CEC}}$ " 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.

"<u>CEC Precertification</u>" 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.

"CEOA" 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

"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

"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.

"<u>CPUC Approval</u>" 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 Cap" means the yearly quantity per Contract Year, in MWh, equal to

"Curtailment 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.
- " $\underline{DAC\text{-}GT}$ " means the Disadvantaged Communities Green Tariff (DAC-GT) program approved by the CPUC.
- "<u>Damage Payment</u>" means the dollar amount that equals the amount of the Development Security.
- "<u>Day</u>" or "<u>day</u>" 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.
- "<u>Delivery Term</u>" 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.
- "<u>Development Security</u>" 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.
- "<u>Electrical Losses</u>" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.
- "<u>Eligible Renewable Energy Resource</u>" 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.

"<u>Facility</u>" means the electricity generating facility described on the Cover Sheet and in <u>Exhibit A</u>, 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.

"<u>Facility Meter</u>" 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.

" $\underline{\text{FERC}}$ " means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Financial Close</u>" 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).

"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.
- "<u>Guaranteed Construction Start Date</u>" 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
- "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) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (db) has a tangible net worth of at least
- , (ec) 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 $\underline{\text{Exhibit L}}$ 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 16.1.
 - "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

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.

"<u>Interconnection Facilities</u>" 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.

"<u>Joint Powers Act</u>" 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.

"<u>Letter(s) of Credit</u>" 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 <u>Exhibit K</u>.

"<u>Licensed Professional Engineer</u>" 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.

"<u>Milestones</u>" 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.

" \underline{MW} " means megawatts in alternating current, unless expressly stated in terms of direct current.

"<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"<u>Negative LMP</u>" 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 (e-mailemail).

- "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.
- "<u>Permitted Transferee</u>" means and entity that has, or is controlled by another Person that satisfies the following requirements:
- (a) A tangible net worth of not less than 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.
- "<u>Person</u>" 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 month commencing after the RA Guarantee DateRA 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 Showing" means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"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 2.4.

"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.

" $\underline{Schedule}$ " has the meaning set forth in the CAISO Tariff, and " $\underline{Scheduled}$ " 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.

"<u>Scheduling Coordinator</u>" or "<u>SC</u>" 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.

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

"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:

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

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

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

"<u>Tax Credits</u>" 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.

"<u>Test Energy</u>" 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.

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"Ultimate Parent" means

- "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).
- "<u>WREGIS</u>" 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;
 - (1) "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 <u>Conditions Precedent</u>. 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 <u>CPUC Approval</u>. 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 <u>Development; Construction; Progress Reports</u>. 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 <u>Exhibit E</u>. In the event Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the AGREEMENT and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. Seller shall also 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 <u>Workforce Requirements</u>. 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 <u>Sale of Product</u>. 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 <u>Exhibit C</u>, 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) a Force Majeure Event, (B) a Curtailment Period; provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (C) 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 <u>Sale of Green Attributes</u>. 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 <u>Imbalance Energy</u>. 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 <u>Ownership of Renewable Energy Incentives</u>. 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 <u>Test Energy</u>. 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** <u>Capacity Attributes</u>. 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

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 <u>CEC Certification and Verification</u>. 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) <u>Eligibility</u>. 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) <u>Transfer of Renewable Energy Credits</u>. 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) <u>Tracking of RECs in WREGIS</u>. 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) <u>Applicable Law.</u> 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.

- 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) <u>Compliance Expenditure Cap</u>. 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 <u>Sections 3.10clauses</u> (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 ("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) <u>Green Attributes</u>. 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 <u>Title and Risk of Loss</u>.

- (a) <u>Energy</u>. 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) <u>Green Attributes</u>. 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 <u>Forecasting</u>. 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) <u>Annual Forecast of Expected Energy</u>. 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) <u>Monthly Forecast of Available Capacity</u>. 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 <u>Exhibit F-2</u> ("<u>Monthly Delivery Forecast</u>"), or as reasonably requested by Buyer.
- (c) <u>Day-Ahead Forecast</u>. 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 ("<u>Day-Ahead Forecast</u>"). 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) <u>Hourly and Sub-Hourly Forecasts.</u> 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) <u>Forecasting Penalties</u>. 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 "<u>Forecasting Penalty</u>") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.

(f) <u>CAISO Tariff Requirements</u>. 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) <u>General</u>. 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, <u>provided</u> 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) <u>Buyer Curtailment.</u> 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) <u>Facility Maintenance</u>. 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 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "Planned Outage").
- (b) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event.</u> Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
 - 4.6 <u>Scheduling Coordinator Responsibilities</u>. 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 <u>WREGIS</u>. 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 ("Buver'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 <u>Guaranteed Energy Production</u>. 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, <u>Buyer Default</u>, and Buyer Curtailment Periods (the "<u>Adjusted Energy Production</u>"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with <u>Exhibit G.</u>
- 4.9 <u>Financial Statements</u>. 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 <u>Interconnection</u>. 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 "<u>Dedicated Interconnection Capacity</u>"). 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 <u>Green e-Certification</u>. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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

- 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit N</u> 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 <u>Metering</u>. 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 <u>Meter Verification</u>. 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 <u>Invoicing</u>. 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 <u>Books and Records</u>. 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.
- 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 <u>Seller's Development Security</u>. 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.

- 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.
- 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; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the Development Cure Period.
- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability 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 "<u>Defaulting Party</u>") 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 transfere 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 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 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
- (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;

<u>provided</u>, 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.

<u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") 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 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 <u>Waiver and Exclusion of Other Damages</u>. 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 <u>Seller's Representations and Warranties</u>. 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 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>Seller Covenants</u>. 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) <u>Local Hire Requirement:</u> Seller shall <u>use commercially reasonable efforts</u> 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) <u>Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats</u>. 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 15th 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 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 <u>Seller Commitments</u>. Seller shall comply with the Seller Commitments set forth in <u>Exhibit O</u> 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 <u>Diversity Reporting</u>. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as <u>Exhibit R</u>, 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 <u>General Prohibition on Assignments</u>. 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 <u>direct or indirect changeChange</u> of <u>controlControl</u> 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 <u>Collateral Assignment</u>. 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; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

(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 <u>Permitted Assignment by Seller</u>. 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

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 <u>Dispute Resolution</u>. 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 <u>Attorneys' Fees</u>. 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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 <u>Claims</u>. 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 <u>Article 16</u>, 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) <u>General Liability</u>. 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) <u>Construction All-Risk Insurance</u>. 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) <u>Contractor's Pollution Liability</u>. 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) <u>Subcontractor Insurance</u>. 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) <u>Umbrella/Excess Liability Insurance</u>. 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) <u>Failure to Comply with Insurance Requirements</u>. 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

- 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. 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 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Binding Effect</u>. 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 <u>Change in Electric Market Design</u>. 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 of Effective Date.	caused this Agreement to be duly executed as of the
[SELLER] CES ELECTRON FARM ONE, LLC	MARIN CLEAN ENERGY, a California joint powers authority
By: Name: Title:	By: Name: Title:
	By: Name:

EXHIBIT A

FACILITY DESCRIPTION

Site Name:	[Moto	Sita must	ha	located	in a	DAC	Conflitti
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Site includes all or some of the following APNs:

County: _____Fresno County, California

Type of Generating Facility: _____Solar photovoltaic

Guaranteed Capacity: ____4.4 MW (AC)

Maximum Output: <u>4.4</u> MW

Delivery Point: Facility Pnode

Interconnection Point: [e.g., XX substation] Panoche 1102 distribution line, Panoche Substation

Bank 3. 36.628, -120.568

Settlement Point: [e.g., NP 15 or PG&E DLAP (TH NP15 GEN APND). Use only if the Contract Price is subject to a Settlement Point adjustment. Otherwise, delete.]

Facility Pnode:

Participating Transmission Owner: Pacific Gas and Electric Company (PG&E) (or any successor entity)

successor entity)

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. <u>Construction of the Facility.</u>

- 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. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 "<u>Commercial Operation Date</u>" 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 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. <u>Extension of the Guaranteed Dates</u>. 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 "<u>Development Cure Period</u>") 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.



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed 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 percented (100%) of the Guaranteed Capacity, Seller shall have 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 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.

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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 mea	sured by the amount of Facility Energy, up to
of the Expe	ected 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	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	
· 3	
(c)	Excess Settlement Interval Deliveries. If during any Settlement Interval,
C 11 1 1' D	1

- 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) <u>Test Energy</u>. 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

- Buyer as Scheduling Coordinator for the Facility. Upon Initial (a) 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) <u>CAISO Costs and Revenues</u>. 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.

- 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) <u>Dispute Costs</u>. 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) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master Data File and Resource Data Template</u>. 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.
- 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																								
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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																								
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Day 29																								
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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:

 $\underline{A} =$ the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{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.

 $\underline{\mathbf{D}} = \mathbf{Contract Price, in \$/MWh}$

"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 ("<u>Certification</u>") of Commercial Operation is delivered by [licensed professional engineer] ("<u>Engineer</u>") to Marin Clean Energy, a California joint powers authority ("<u>Buver</u>") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("<u>Agreement</u>") by and between [<u>Seller Entity]CES Electron Farm One, LLC</u> 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].

EXECUT	ED by [LICENSED PI	ROFESSIONAL	ENGINEER]
his	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER]
			Sign:
			Print:
			Title:

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

engineer] (" <u>Engineer</u> ") to Marin Clean Energaccordance with the terms of that certaccordance (" <u>Agreement</u> ") by and between	alled Capacity is delivered by [licensed professional ergy, a California joint powers authority ("Buyer") in ain Renewable Power Purchase Agreement dated even [Seller Entity]CES Electron Farm One, LLC and retification but not otherwise defined herein shall have runs in the Agreement.
J J 1	Facility demonstrated peak electrical output of MW inbient conditions on the date of the performance test
EXECUTED by [LICENSED PROFESSIO]	NAL ENGINEER]
this, 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 [Seller Entity] CES

<u>Electron Farm One, LLC</u> ("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
[SELLER ENTITY]
CES ELECTRON FARM ONE, LLC
Sign:
Print:
Title:

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EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: Bank Ref.:

Amount: US\$[XXXXXXXX]

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. \$[XXXXXX] (United States Dollars [XXXXX] 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-mailemail 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-XXXX-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: Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of ______, 20__ (the "Agreement"). 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 , which equals the full available amount under the Letter of Credit, because U.S. \$ 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. 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

between [ranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and], a [] (" <u>Guarantor</u> "), and Marin Clean Energy, a California joint powers (together with its successors and permitted assigns, " <u>Buyer</u> ").
	Recitals
A.	Buyer and [SELLER ENTITY], 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 " <u>PPA</u> ") 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

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

Agreement

the PPA.

- For value received, Guarantor does hereby unconditionally, absolutely and 1. 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 dollarfor-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 "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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, statue or regulation, in each such event in any such proceeding, or
 - (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
 - (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
 - (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

 (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

<u>provided</u> 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:
 - 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;
 - 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:
Ву:
Printed Name:
Title:
BUYER:
By:
Printed Name:
Title:
Ву:
Printed Name:
Title:

EXHIBIT M

METERING DIAGRAM



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EXHIBIT N

NOTICES

CES ELECTRON	MARIN CLEAN ENERGY, a California
FARM ONE, LLC	joint powers authority ("Buyer")
("Seller")	(a) (b) (c) (c) (c) (c) (c) (c) (c) (c) (c) (c
All Notices:	All Notices:
	Marin Clean Energy
Street: 1808 Wedemeyer St, Suite 221	1125 Tamalpais Avenue
City: San Francisco, CA, 94122	San Rafael, CA 94901
Attn: Asset Management	Attn: Contract Administration
Phone: <u>248-808-2015</u>	Phone: (415) 464-6010
Email: Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Reference Numbers:	Reference Numbers:
Duns:	Duns: 829602338
Federal Tax ID Number: 84-4804147 (Parent)	Federal Tax ID Number: 26-4300997
Invoices:	Invoices:
Attn: Accounts Payable	Attn: Power Settlement Analyst
Phone: <u>248-808-2015</u>	Phone: (415) 464-6683
E mail: Email:	E mailEmail:
accounting@whitepinerenew.com	Settlements@mcecleanenergy.org
Scheduling:	Scheduling:
Attn: Scheduling	Attn: ZGlobal
Phone: 248-808-2015	Phone: (916) 458-4080
Email: Email:	E mail Email: dascheduler@zglobal.biz
chris.woodington@whitepinerenew.com	
Confirmations:	Confirmations:
Attn: CEO	Attn: Director of Power Resources
Phone: 248-808-2015	Phone: (415) 464-6685
Email: Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org
Payments:	Payments:
Attn: Accounts Receivable	Attn: Power Settlement Analyst
Phone: <u>248-808-2015</u>	Phone: (415) 464-6683
E-mail: Email:	E-mailEmail:
accounting@whitepinerenew.com	Settlements@mcecleanenergy.org
Wire Transfer:	Wire Transfer:
i a la l	100
With additional Notices of an Event of Default	With additional Notices of an Event of
to:	Default to:
	Hall Energy Law PC
Attn: Jordan Dansby	Attn: Stephen Hall
Phone: <u>703-618-0851</u>	Phone: (503) 313-0755
E-mail: jordan@cleanenergycounsel.com	Email: steve@hallenergylaw.com

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FARM ONE, LLC ("Seller")	MARIN CLEAN ENERGY, a California joint powers authority ("Buyer")
Emergency Contact:	Emergency Contact:
Attn: Emergency	Attn:
Phone: 248-808-2015	Phone:
Email: Email: evan@whitepinerenew.com	E mailEmail:

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EXHIBIT O

SELLER COMMITMENTS

	Participation of contractors or subcontractors or businesses that are Veteran-owned;	Formatted: Space Before: 0 pt, After: 12 pt
	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 34.0 (or the latest version) Tool;	Formatted: Space Before: 0 pt, After: 12 pt
<u>⊠</u>	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;	Formatted: Space Before: 0 pt, After: 12 pt
	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;	Formatted: Space Before: 0 pt, After: 12 pt
	Projects that commit to including components and materials manufactured and/or assembled in the United States; and	Formatted: Space Before: 0 pt, After: 12 pt
	Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [describe community benefits]; and 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.	Formatted: Space Before: 0 pt, After: 12 pt
	Other: [describe open space preservation, habitat improvement, or food programs].	Formatted: Space Before: 0 pt, After: 12 pt

EXHIBIT P

POLLINATOR SCORECARD

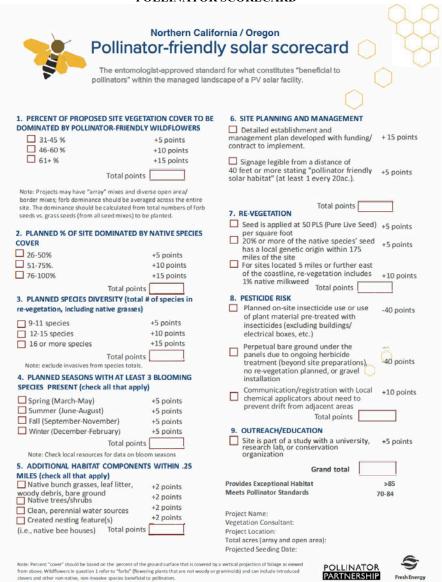


EXHIBIT Q OPERATING RESTRICTIONS

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

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 *
2.	Business Name *
3.	Where is your business located/headquartered? *
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 an 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
	Mark only one oval.
	Yes
	◯ No
	Qualified as WMDVLGBTBEs but not GO 156 Certified

https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit

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.
	MODEL CONTROL OF THE
	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.

https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/editallogs with the control of t

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

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	/9			

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.thesupplierclearinghouse.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	
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	88 Private ho	useholds
	89 Miscellane	eous services
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	Control Market Street Co.	ation of human resources
		ntal quality and housing
	Comment agreement and an artist	ation of economic programs
		ecurity and international affairs
10.		s is majority women, minority, disabled veteran, or LGBT owned, but rtified, please explain why your business has not gone through the rocess.
		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
Su	ubcontractors	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
Su	ubcontractors	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
Su 11.		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. ess use subcontractors that are certified under GO 156 for this
9505	Will your busin	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. ess use subcontractors that are certified under GO 156 for this st with MCE? *
9505	Will your busin recent contract Mark only one of Yes	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. ess use subcontractors that are certified under GO 156 for this st with MCE? *
9505	Will your busin recent contrac	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. ess use subcontractors that are certified under GO 156 for this it with MCE? *

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MCE Supplier Diversity Questionnaire

12.	certified su products of products (k	rered yes to the previous question, please provide a list of those abcontractors, the anticipated subcontract amount, and if this is for r services. Example: Electrical Design Technology, Inc.; \$100,000, patteries). Please provide information only on subcontractors you intend his recent MCE contract.
13.		e, please describe any hiring targets your business has for minority- men-owned, LGBTQ-owned, or disabled veteran-owned ttors.
sex,	color, ethnic	osition 209, MCE does not give preferential treatment based on race, city, or national origin. Providing information in these categories is not impact the selection process.
La	bor .	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."

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Agreements

4	10	m	n	1	n	

MCE Supplier Diversity Questionnaire

	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-tride 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
	past efforts.
16.	If you're employing workers or businesses in the MCE service area, please quantify
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.
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
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
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
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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

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0/9/2020	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?	
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	
	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	
tps://docs.goo	gle.com/forms/d/12VVqgNBag7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit	9/11

20		MCE Supplier Diversity Questionnaire
20.	If yes, please describe the apprenticeship programs supported/used.	
	2	
	total and Market and	09, MCE does not give preferential treatment based on race, ational origin. Providing information in these categories is
no de la companya del companya de la companya del companya de la c	and the second	act the selection process. Responses are collected for ng 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.		initiatives to promote workplace diversity, please describe ovide any supporting statistics or documentation for diversity
22.	If there is anything e answers above, plea	else related to Supplier Diversity that is not captured in your use describe below.

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ATTACHMENT D

DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Entity name, state of formation, type of entity]CES Electron Farm One, LLC

Buyer: Marin Clean Energy, a California joint powers authority

<u>Description of Facility</u>: A <u>—0.24</u> 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 "<u>DAC</u>"), within PG&E's distribution service territory.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	5/29/2019
Documentation of Conditional Use Permit if required: [X] CEQA, [] Cat Ex, [] Neg Dec, [X] Mitigated Neg Dec, [] EIR	10/31/2022
Executed Interconnection Agreement	12/15/2022
Financial Close	3/31/2022
Expected Construction Start Date	8/1/2023
Initial Synchronization	8/1/2023
Network Upgrades completed	<u>N/A</u>
Expected Commercial Operation Date	12/31/2023

<u>Delivery Term</u>: The period for Product delivery will be for <u>twenty (20)</u> Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1 -XX - 20	[If there is an 668 MWh in Contract Year 1, and subject to

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annual adjustment for degradation, this should be noted. of 0.50%

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Guaranteed Capacity: ____0.24 MW [Guaranteed Capacity may not exceed 500 kW.]

Contract Price: shall be \$[XX]/MWh. [Per MCE Advice Letter 42 E, "bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC's Energy Division Staff via email on September 5, 2019".]Contract Price:

Product:

- ▼ Facility Energy
- ☑ Green Attributes (Portfolio Content Category 1)

Development Security and Performance Security

Development Security:

Performance Security:

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Exhibits: Exhibit A

Facility Description Facility Construction and Commercial Operation Exhibit B Exhibit C Compensation Exhibit D Reserved Exhibit E Form of Progress Report Exhibit F Form of Average Expected Energy Report Guaranteed Energy Production Damages Calculation Exhibit G Exhibit H Form of Commercial Operation Date Certificate Exhibit I Form of Installed Capacity Certificate Exhibit J Form of Construction Start Date Certificate Exhibit K Form of Letter of Credit Exhibit L Form of Guaranty Exhibit M Metering Diagram Exhibit N Notices Exhibit O Seller Commitments

Exhibit P Pollinator Scorecard
Exhibit Q Operating Restrictions
Exhibit R Diversity Reporting

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "<u>Agreement</u>") is entered into as of ______, 2022 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 <u>Contract Definitions</u>. 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).

"<u>CAISO</u>" 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.

"<u>CEC</u>" 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.

"<u>CEC Precertification</u>" 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

"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

"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.

" $\underline{DAC\text{-}GT}$ " means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

"<u>Damage Payment</u>" means the dollar amount that equals the amount of the Development Security.

"<u>Day</u>" or "<u>day</u>" 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.

- "<u>Delivery Term</u>" 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.
- "<u>Development Security</u>" 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.
- "<u>Electrical Losses</u>" 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.
- "<u>Facility</u>" means the electricity generating facility described on the Cover Sheet and in <u>Exhibit A</u>, 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.

"<u>Financial Close</u>" 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.

"<u>Guaranteed Commercial Operation Date</u>" 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.

"<u>Guaranteed Energy Production</u>" means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by

"Guarantor" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of

Baa3 or better from Moody's, (ab) has a tangible net worth of at least , (ec) 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 $\underline{\text{Exhibit L}}$ 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.

"<u>Interconnection Facilities</u>" 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.

"<u>Joint Powers Act</u>" 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.

"<u>Letter(s) of Credit</u>" 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.

"<u>Licensed Professional Engineer</u>" 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.

"<u>Milestones</u>" 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.

" $\underline{\mathbf{MW}}$ " 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 (e-mailemail).
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
- "<u>Operating Procedures</u>" or "<u>Operating Restrictions</u>" means those rules, requirements, and procedures set forth on <u>Exhibit Q</u>.
- "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.
- "<u>Performance Measurement Period</u>" 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 and entity that has, or is controlled by another Person that satisfies the following requirements:
- (a) A tangible net worth of not less than

 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 dollarsZero 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 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; and.

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

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

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

Formatted: Indent: First line: 0.5", No bullets or numbering, No widow/orphan control, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tab stops: Not at 1" "<u>Tax Credits</u>" 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.

"<u>Transmission System</u>" means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point.

"Ultimate Parent" means

"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 <u>Rules of Interpretation</u>. 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;
 - (1) "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 <u>Conditions Precedent</u>. 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 <u>CPUC Approval</u>. 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 <u>Development; Construction; Progress Reports</u>. 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 <u>Exhibit E</u>. In the event Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate this Agreement and retain the Development Security as damages. Seller shall also 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 <u>Workforce Requirements</u>. 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 <u>Sale of Product</u>. 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 <u>Exhibit C</u>, 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) a Force Majeure Event, (B) a Curtailment Period; provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (C) 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 <u>Sale of Green Attributes</u>. 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 <u>Capacity Attributes</u>. 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 <u>CEC Certification and Verification</u>. 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 <u>California Renewables Portfolio Standard.</u>

(a) <u>Eligibility</u>. 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) <u>Transfer of Renewable Energy Credits</u>. 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) <u>Tracking of RECs in WREGIS</u>. 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) <u>Applicable Law.</u> 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.

- 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 "Compliance" ("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) <u>Green Attributes</u>. 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) <u>Energy</u>. 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) <u>Green Attributes</u>. 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 <u>Forecasting</u>. 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) <u>Annual Forecast of Expected Energy</u>. 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 <u>Exhibit F</u> ("Average Expected Energy"), or as reasonably requested by Buyer.
 - (b) Reserved.

4.4 Dispatch Down/Curtailment

- (a) <u>General</u>. 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, <u>provided</u> 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) <u>Buyer Curtailment.</u> 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) <u>Facility Maintenance</u>. 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 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "Planned Outage").
- (b) <u>Forced Facility Outage</u>. 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) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event.</u> Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. 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 <u>WREGIS</u>. 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 <u>Guaranteed Energy Production</u>. 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, <u>Buyer Default</u>, and Buyer Curtailment Periods (the "<u>Adjusted Energy Production</u>"). 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 <u>Financial Statements</u>. 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 <u>Interconnection</u>. 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 "<u>Dedicated Interconnection Capacity</u>").
- 4.11 <u>Green e-Certification</u>. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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

- 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit N</u> 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 <u>Meter Verification</u>. 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 <u>Invoicing</u>. 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 <u>Books and Records</u>. 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.

- 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 <u>Seller's Development Security</u>. 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.

- 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.
- 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; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the Development Cure Period.
- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability 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 "<u>Defaulting Party</u>") 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 transfere 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 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 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 "<u>Terminated Transaction</u>") 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;

<u>provided</u>, 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 <u>Notice of Payment of Termination Payment</u>. 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 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 <u>Seller's Representations and Warranties</u>. 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 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>Seller Covenants</u>. 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) <u>Local Hire Requirement:</u> Seller shall <u>use commercially reasonable efforts</u> 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 "<u>Local Hire Requirement</u>"). 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. <u>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.</u>

- (c) <u>Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats</u>. 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 15th 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 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 <u>Seller Commitments</u>. 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 <u>Diversity Reporting</u>. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as <u>Exhibit R</u>, 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 <u>Responsible Procurement</u>. 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 ("<u>Forced Labor</u>"). 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 <u>General Prohibition on Assignments</u>. 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 <u>direct or indirect changeChange</u> of <u>controlControl</u> 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; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:
- (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 <u>Permitted Assignment by Seller</u>. 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

- 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 <u>Attorneys' Fees</u>. 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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 <u>Claims</u>. 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 <u>Article 16</u>, 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) <u>General Liability</u>. 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) <u>Construction All-Risk Insurance</u>. 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) <u>Contractor's Pollution Liability</u>. 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) <u>Subcontractor Insurance</u>. 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) <u>Umbrella/Excess Liability Insurance</u>. 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 <u>Definition of Confidential Information</u>. The following constitutes "<u>Confidential Information</u>," 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.
- 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 seg.). 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. 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 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>No Waiver</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 <u>No Recourse</u>. 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 of Effective Date.	caused this Agreement to be duly executed as of the
[SELLER] CES ELECTRON FARM ONE, LLC	MARIN CLEAN ENERGY, a California joint powers authority
By: Name: Title:	By: Name: Title:
	By: Name:

EXHIBIT A

FACILITY DESCRIPTION

Formatted: Font: Times New Roman
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Site Name: Conflitti

Site includes all or some of the following APNs:

County: _____Fresno County, California

Type of Generating Facility: _____Solar photovoltaic

Guaranteed Capacity: _____0.24 MW (AC)

Maximum Output: ____0.24 MW

Delivery Point: Interconnection Point

Interconnection Point: [e.g., XX substation] 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. <u>Construction of the Facility.</u>

- 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. <u>Commercial Operation of the Facility.</u> "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 "<u>Commercial Operation Date</u>" 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.
- Termination for Failure to Achieve Commercial Operation. If the Facility has not achieved Commercial Operation within 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.



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed

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 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 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.

Facility Energy. Buyer shall pay Seller the Contract Price for each MWh

up to	of the Expected Energy for each Contract Year.
(b) Annual Excess E	energy. If, at any point in any Contract Year, the amount
of Facility Energy plus the amount of	Deemed Delivered Energy exceeds
of the Expected Energy	for such Contract Year, the price to be paid for additional
Facility Energy or Deemed Delivered E	nergy shall be equal to

of Product, as measured by the amount of Facility Energy and Deemed Delivered Energy, if any,

- (c) <u>Excess Settlement Interval Deliveries</u>. 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 ("<u>Excess MWh</u>"), then the price applicable to all such excess MWh in such measurement period shall be <u>zero dollarsZero Dollars</u> (\$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:

 $\underline{A} =$ the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

 \underline{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.

 $\underline{\mathbf{D}} = \mathbf{Contract Price, in \$/MWh}$

"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 ("<u>Certification</u>") of Commercial Operation is delivered by [licensed professional engineer] ("<u>Engineer</u>") to Marin Clean Energy, a California joint powers authority ("<u>Buver</u>") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("<u>Agreement</u>") by and between [<u>Seller Entity]CES Electron Farm One, LLC</u> 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].

EXECUT	TED 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 Cengineer] ("Engineer") to Marin Clean Energy, a accordance with the terms of that certain Remarks ("Agreement") by and between Suyer. All capitalized terms used in this Certificate the respective meanings assigned to such terms in the certificate of the control of the certificate the respective meanings assigned to such terms in the certificate of the certifi	California joint powers authority ("Buver") in newable Power Purchase Agreement dated ther Entity]CES Electron Farm One, LLC and ion but not otherwise defined herein shall have
I hereby certify the performance test for the Facility AC at the Delivery Point, as adjusted for ambient ("Installed Capacity").	
EXECUTED by [LICENSED PROFESSIONAL E	NGINEER]
this, 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 [Seller Entity] 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:
 Construction Start (as defined in <u>Exhibit B</u> 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
[SELLER ENTITY] CES ELECTRON FARM ONE, LLC
Sign:
Print:
Title:

Formatted: Font color: Text 1

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: Bank Ref.:

Amount: US\$[XXXXXXXX]

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. \$[XXXXXX] (United States Dollars [XXXXX] 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-XXXX-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

between [ranty (this " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and], a [] (" <u>Guarantor</u> "), and Marin Clean Energy, a California joint powers (together with its successors and permitted assigns, " <u>Buyer</u> ").
	Recitals
A.	Buyer and [SELLER ENTITY], 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 " <u>PPA</u> ") 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

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

the PPA.

Agreement

- For value received, Guarantor does hereby unconditionally, absolutely and 1. 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 dollarfor-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 "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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, statue or regulation, in each such event in any such proceeding, or
 - (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
 - (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
 - (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

 (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

<u>provided</u> 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:
 - 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;
 - 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

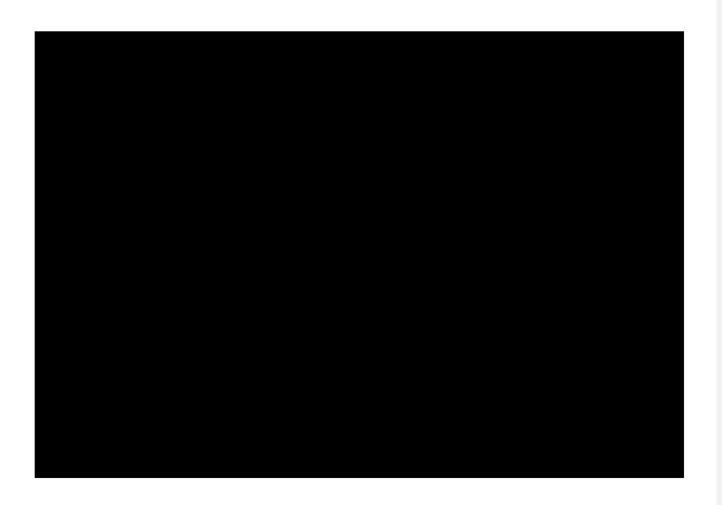
and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic 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:
[]
Ву:
Printed Name:
Title:
BUYER:
[]
Ву:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M METERING DIAGRAM



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EXHIBIT N

NOTICES

CES ELECTRON	MARIN CLEAN ENERGY, a California	Formatted Table
FARM ONE, LLC	joint powers authority ("Buyer")	
("Seller")	T	
All Notices:	All Notices:	
	Marin Clean Energy	
Street: 1808 Wedemeyer St, Suite 221	1125 Tamalpais Avenue	
City: San Francisco, CA, 94122	San Rafael, CA 94901	
Attn: Asset Management	Attn: Contract Administration	
Phone: <u>248-808-2015</u>	Phone: (415) 464-6010	8-
Email: Email: evan@whitepinerenew.com.	Email: Procurement@mcecleanenergy.org	Formatted: Font color: Text 1
Reference Numbers:	Reference Numbers:	
Duns:	Duns: 829602338	
Federal Tax ID Number: 84-4804147 (Parent)	Federal Tax ID Number: 26-4300997	Formatted: Font color: Text 1
Invoices:	Invoices:	
Attn: Accounts Payable	Attn: Power Settlement Analyst	
Phone: 248-808-2015	Phone: (415) 464-6683	
E mail: Email: accounting@whitepinerenew.com.	E-mail: Settlements@mcecleanenergy.org	Formatted: Font color: Text 1
Scheduling:	Scheduling:	
Attn: Scheduling	Attn: ZGlobal	
Phone: 248-808-2015	Phone: (916) 458-4080	
Email: Email:	E-mail: dascheduler@zglobal.biz	
chris.woodington@whitepinerenew.com		Formatted: Font color: Text 1
Confirmations:	Confirmations:	
Attn: CEO	Attn: Director of Power Resources	
Phone: 248-808-2015	Phone: (415) 464-6685	
Email: Email: evan@whitepinerenew.com	Email: Procurement@mcecleanenergy.org	Formatted: Font color: Text 1
Payments:	Payments:	
Attn: Accounts Receivable	Attn: Power Settlement Analyst	
Phone: 248-808-2015	Phone: (415) 464-6683	
E-mail: Email:	E-mail: Settlements@mcecleanenergy.org	
accounting@whitepinerenew.com		Formatted: Font color: Text 1
Wire Transfer:	Wire Transfer:	,
		Formatted: Font color: Text 1
With additional Notices of an Event of Default	With additional Notices of an Event of	*
to:	Default to:	
	Hall Energy Law PC	
Attn: Jordan Dansby	Attn: Stephen Hall	
Phone: 703-618-0851	Phone: (503) 313-0755	
E mail: Email: jordan@cleanenergycounsel.com	Email: steve@hallenergylaw.com	Formatted: Font color: Text 1

FARM ONE, LLC ("Seller")	MARIN CLEAN ENERGY, a California joint powers authority ("Buyer")	Formatted Table
Emergency Contact:	Emergency Contact:	
Attn: Emergency	Attn:	
Phone: 248-808-2015	Phone:	
Email: Email: evan@whitepinerenew.com.	E-mail:	Formatted: Font color: Text 1

EXHIBIT O

SELLER COMMITMENTS

Drafting	Note: Parties to add further detail regarding these commitments as needed.	
Seller to c	heck as applicable (collectively, the "Seller Commitments"):	
	Participation of contractors or subcontractors or businesses that are Veteran-owned;	Formatted: Space Before: 0 pt, After: 12 pt
	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;	Formatted: Space Before: 0 pt, After: 12 pt
<u></u>	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;	Formatted: Space Before: 0 pt, After: 12 pt
	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;	Formatted: Space Before: 0 pt, After: 12 pt
	Projects that commit to including components and materials manufactured and/or assembled in the United States; and	Formatted: Space Before: 0 pt, After: 12 pt
<u></u>	Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [describe community benefits]; and 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.	Formatted: Space Before: 0 pt, After: 12 pt
	Other: [describe open space preservation, habitat improvement, or food programs].	

EXHIBIT P

POLLINATOR SCORECARD

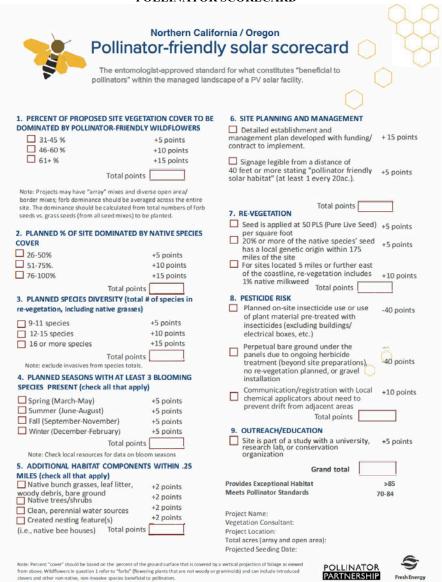


EXHIBIT Q OPERATING RESTRICTIONS

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

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 *
2.	Business Name *
3.	Where is your business located/headquartered? *
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 an 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
	Mark only one oval.
	Yes
	◯ No
	Qualified as WMDVLGBTBEs but not GO 156 Certified

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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.
	MODEL CONTROL OF THE
	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.

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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

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	/9			

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.thesupplierclearinghouse.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	
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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 tradenondurable 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	
<u>_</u>	_ 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	
F	87 Engineering and management services	
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2020		MCE Supplier Diversity Questionnaire					
	88 Private ho	useholds					
	89 Miscellane	eous services					
	91 Executive,	legislative, and general government					
	92 Justice, pu	iblic order, and safety					
	93 Finance, taxation, and monetary policy						
	94 Administration of human resources						
		ntal quality and housing					
	Comment agreement agreement	ation of economic programs					
		ecurity and international affairs					
10.		s is majority women, minority, disabled veteran, or LGBT owned, but rtified, please explain why your business has not gone through the rocess.					
		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					
Su	ubcontractors	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					
Su	ubcontractors	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					
Su 11.		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. ess use subcontractors that are certified under GO 156 for this					
9505	Will your busin	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. ess use subcontractors that are certified under GO 156 for this st with MCE? *					
9505	Will your busin recent contract Mark only one of Yes	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. ess use subcontractors that are certified under GO 156 for this st with MCE? *					
9505	Will your busin recent contrac Mark only one o	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. ess use subcontractors that are certified under GO 156 for this it with MCE? *					

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MCE Supplier Diversity Questionnaire

12.	certified su products o products (k	rered yes to the previous question, please provide a list of those abcontractors, the anticipated subcontract amount, and if this is for r services. Example: Electrical Design Technology, Inc.; \$100,000, patteries). Please provide information only on subcontractors you intend his recent MCE contract.
13.		e, please describe any hiring targets your business has for minority- men-owned, LGBTQ-owned, or disabled veteran-owned ttors.
sex,	color, ethnic	osition 209, MCE does not give preferential treatment based on race, city, or national origin. Providing information in these categories is not impact the selection process.
La	bor .	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."

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Agreements

4	10	m	n	1	n	

MCE Supplier Diversity Questionnaire

	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-tride 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
	past efforts.
16.	If you're employing workers or businesses in the MCE service area, please quantify
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.
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
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
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
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
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
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

8/11

0/9/2020	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?	
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	
	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		MCE Supplier Diversity Questionnaire
20.	If yes, please describ	be the apprenticeship programs supported/used.
	total and the same of	09, MCE does not give preferential treatment based on race, ational origin. Providing information in these categories is
no de la companya del companya de la companya del companya de la c	anna ann an a	act the selection process. Responses are collected for ng purposes only pursuant to SB 255.
	uity, Diversity, clusion, and Justice	MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.
21.		initiatives to promote workplace diversity, please describe ovide any supporting statistics or documentation for diversity
22.	If there is anything e answers above, plea	else related to Supplier Diversity that is not captured in your use describe below.

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ATTACHMENT E

DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Entity name, state of formation, type of entity]	
<u>Buyer</u> : Marin Clean Energy, a California joint powers authority	
<u>Description of Facility</u> : A MW renewable energy generating disadvantaged community, as identified by the California Environment CalEnviroScreen 34.0 (or the latest version) tool (such community, a "distribution service territory	ital Protection Agency's
Milestones:	
Milestone	Date for Completion
Evidence of Site Control	
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

<u>Delivery Term</u>: The period for Product delivery will be for _____(__) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1-XX	[If there is an annual adjustment for degradation, this should be noted.]

Guaranteed Capacity: ____ MW [Guaranteed Capacity mustmay not be less than 0.5 MW nor exceed 4.64 MW 500 kW.]

Contract Price: shall be \$[XX]/MWh. [Per MCE Advice Letter 42-E, "bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC's Energy Division Staff via email on September 5, 2019".]

Product:

- **☒** Facility Energy
- Green Attributes (Portfolio Content Category 1)
- - ☐ 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: [Insert dollar amount equal to \$60/kW of Guaranteed Capacity].

Performance Security: [Insert dollar amount equal to \$60/kW of Guaranteed Capacity].

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Exhibits: Exhibit A **Facility Description** Facility Construction and Commercial Operation Exhibit B Compensation Exhibit C Scheduling Coordinator Responsibilities Reserved Exhibit D Form of Progress Report Exhibit E Form of Average Expected Energy Report Exhibit F-1 Exhibit F-2 Form of Monthly Available Capacity Report Guaranteed Energy Production Damages Calculation Exhibit G Exhibit H Form of Commercial Operation Date Certificate Exhibit I Form of Installed Capacity Certificate Form of Construction Start Date Certificate Exhibit J Form of Letter of Credit Exhibit K Exhibit L Form of Guaranty Exhibit M Metering Diagram Notices Exhibit N Exhibit O **Seller Commitments** Exhibit P Pollinator Scorecard **Operating Restrictions** Exhibit Q

Exhibit R Diversity Reporting

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this "<u>Agreement</u>") is entered into as of _______, 20212022 (the "<u>Effective Date</u>"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 <u>Contract Definitions</u>. 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.
- "<u>Ancillary Services</u>" means all ancillary services, products and other attributes, if any, associated with the Facility.

"<u>Available Capacity</u>" 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.

"<u>Business Day</u>" 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.

"<u>Buyer Curtailment Order</u>" 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.

"<u>Buyer Curtailment Period</u>" 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) <u>Buyer Bid Curtailment or (b)</u> a Buyer Curtailment Order; <u>provided</u> 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).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.

"<u>CAISO Operating Order</u>" 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.

"<u>CEC</u>" 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.
 - "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 [\$XXX/day, which is equal to the Development Security divided by 90].
 - "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. 18.1.
- "Construction Delay Damages" means an amount equal to [\$XXX/day, which is equal to the Development Security divided by 180-].
 - "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.
- "<u>Curtailment Cap</u>" means the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

"Curtailment 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) 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;
- (e)(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
- (d)(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.

- "<u>DAC-GT</u>" means the Disadvantaged Communities Green Tariff (DAC-GT) program approved by the CPUC.
- "<u>Damage Payment</u>" means the dollar amount that equals the amount of the Development Security.
- "<u>Day</u>" or "<u>day</u>" 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.
 - "<u>Day-Ahead LMP</u>" 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.
 - "<u>Defaulting Party</u>" 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 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), 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.
- "<u>Delivery Term</u>" 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.
- "<u>Development Security</u>" 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.

"<u>Effective FCDS Date</u>" 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.

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

"<u>Eligible Renewable Energy Resource</u>" 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.

"<u>Expected Energy</u>" 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.

"<u>Expected FCDS Date</u>" 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.

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

"<u>Facility Energy</u>" means the Energy during any <u>Settlement Interval or Settlement Periodapplicable measurement period</u>, 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.

"<u>Facility Meter</u>" means the <u>CAISO Approved Meterrevenue-grade meter that meets the requirements of the Participating Transmission Owner</u> 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 <u>CAISO applicable</u> meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"<u>Financial Close</u>" 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. 10.1.

"<u>Forced Facility Outage</u>" 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.

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

"<u>Guaranteed Construction Start Date</u>" 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 eighty-five percent (8580%).

"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) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"<u>Guaranty</u>" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as <u>Exhibit L</u> 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 16.1.16.1.

"Indemnifying Party" has the meaning set forth in Section 16.1.16.1.

"<u>Initial Synchronization</u>" 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.

"<u>Interconnection Facilities</u>" 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.

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

"<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"<u>Joint Powers Agreement</u>" 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.

"<u>Law</u>" 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.

"<u>Letter(s) of Credit</u>" 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 <u>Exhibit K</u>.

"<u>Licensed Professional Engineer</u>" 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.

- "<u>Milestones</u>" 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.
- "<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.
- "<u>MWh</u>" 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 (e-mail).
- "<u>NP-15</u>" means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.
- "<u>Operating Procedures</u>" or "<u>Operating Restrictions</u>" means those rules, requirements, and procedures set forth on <u>Exhibit Q</u>.
- -"Pacific Prevailing Time" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.
- "<u>Participating Transmission Owner</u>" or "<u>PTO</u>" 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 <u>Exhibit A</u>.

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

"<u>Performance Measurement Period</u>" 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.

"<u>Permitted Transferee</u>" means and entity that has, or is controlled by another Person that satisfies the following requirements:

- (a) A tangible net worth of not less than one hundred fifty million dollars (\$150<u>Fifty Million Dollars (\$50,000,000)</u> 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.

"<u>Portfolio Content Category 3</u>" or "<u>PCC3</u>" 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.

"<u>PTC</u>" 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 month commencing after the RA Guarantee Date, 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 Showing" means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to

the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

"<u>Real-Time Price</u>" 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.

"<u>S&P</u>" 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.

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

"<u>Site</u>" means the necessary real property on which the Facility is or will be located, as further described in <u>Exhibit A</u>, 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, or similar instrument with respect to the Site.

"Station Use" means:

- (a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and
- (b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

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

"<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Tax Credits</u>" 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.

"<u>Termination Payment</u>" has the meaning set forth in Section <u>11.3.11.3.</u>

"<u>Test Energy</u>" 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.

"<u>Transmission System</u>" means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

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

"<u>Workforce Requirements</u>" 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).

"<u>WREGIS</u>" 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).

"<u>WREGIS Certificates</u>" 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;

- (1) "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 3.1, 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 <u>Conditions Precedent</u>. 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;
- (e)(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;
- (d)(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;

- (e)(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);
- (f)(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;-
- (g)(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;
- (h)(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;
- (i)(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) 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;
- (j) Twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers;

- (n)(k) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and_
- (o)(1) 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 <u>CPUC Approval</u>. 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.
- Development; Construction; Progress Reports. Within fifteen (15) days after 2.4 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. In the event Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the AGREEMENTthis Agreement and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, 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.
- 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

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Date in accordance with the terms of this Agreement.

2.6 <u>Workforce Requirements</u>. Seller agrees to <u>comply with the Workforce</u> Requirements and to provide Buyer copies of documentation establishing ongoing compliance with the <u>Workforce Requirements 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.</u>

ARTICLE 3 PURCHASE AND SALE

- 3.1 <u>Sale of Product</u>. 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 <u>Exhibit C</u>, 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) a Force Majeure Event, (B) a Curtailment Period; <u>provided</u> such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (C) 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 <u>Sale of Green Attributes</u>. 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 <u>Imbalance Energy</u>. 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.

3.3 Reserved.

3.4 <u>Ownership of Renewable Energy Incentives</u>. 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 <u>Test Energy</u>. 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.

3.6 **Reserved**.

- 3.7 <u>Capacity Attributes</u>. 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 the product of (i) the RA Shortfall Amount, and (ii) the sum of (A) the CPUC System RA Penalty and (B) CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); 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 <u>CEC Certification and Verification</u>. 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.

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3.9 California Renewables Portfolio Standard.

- (a) <u>Eligibility</u>. 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) <u>Transfer of Renewable Energy Credits</u>. 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) <u>Tracking of RECs in WREGIS</u>. 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) <u>Applicable Law</u>. 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) Compliance Expenditure Cap. If Subject to Seller establishes 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 Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.10 (a), (b) and (c), then the Parties agree that Compliance Actions, the maximum amount of costs and out-of-pocket expenses Seller shall be required obligated to bear during the Delivery Term with respect to the Compliance Actions shall be capped at twenty thousand dollars Twenty Thousand Dollars (\$20,000.00) per MW of Guaranteed Capacity ("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) <u>Green Attributes</u>. 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 <u>Title and Risk of Loss.</u>

- (a) <u>Energy</u>. 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) <u>Green Attributes</u>. 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 <u>Forecasting</u>. 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 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-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.
- 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) <u>Forecasting Penalties</u>. 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 "<u>Forecasting Penalty</u>") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.
- (b) <u>CAISO Tariff Requirements</u>. 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. Reserved.

(f)

4.4 <u>Dispatch Down/Curtailment</u>

- (a) <u>General</u>. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any <u>Curtailment Order</u>, Buyer Curtailment Order, or notice received from <u>CAISO</u> in respect of a <u>Buyer Bid Curtailment</u>, <u>provided</u> 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) <u>Buyer Curtailment.</u> 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) <u>Facility Maintenance</u>. 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 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "Planned Outage").
- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with <u>prompt</u> Notice and expected duration (if known) of any Forced Facility Outage <u>that has continued</u>, or is expected to continue, for more than ninety-six (96) hours.
- (c) <u>System Emergencies and other Interconnection Events</u>. 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) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section <u>6.2.6.2.</u>
- 4.6 <u>Scheduling Coordinator Responsibilities</u>. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in Exhibit D.

4.6 Reserved.

4.7 <u>WREGIS</u>. 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 ("Buver'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 <u>Guaranteed Energy Production</u>. 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, and Buyer Curtailment Periods (the "<u>Adjusted Energy Production</u>"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with <u>Exhibit G.</u>
- 4.9 <u>Financial Statements</u>. 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 <u>Interconnection</u>. 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 "<u>Dedicated Interconnection Capacity</u>"). 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. (the "<u>Dedicated Interconnection Capacity</u>").
- 4.11 <u>Green e-Certification</u>. Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("<u>Attestation</u>") for Product delivered under this Agreement to the Center for Resource Solutions ("<u>CRS</u>") 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

- 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 <u>Cooperation</u>. 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 <u>Maintenance of the Facility</u>. 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 <u>Maintenance of Health and Safety</u>. 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 <u>Exhibit N</u> 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

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 <u>Exhibit M</u>. 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 <u>CAISO the CAISOthe 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. 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.</u>

7.2 <u>Meter Verification</u>. 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 <u>Invoicing</u>. 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 fifteen (15) Business Days after the CAISO T+9 settlement information becomes available 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 <u>Books and Records</u>. 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.
- Billing Disputes. A Party may, in good faith, dispute the correctness of any 8.5 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 <u>Seller's Development Security</u>. 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

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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.

- 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 <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>. 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 ("<u>Security Interest</u>") 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 <u>Addresses for the Delivery of Notices</u>. 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 <u>Exhibit N</u> 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 <u>Exhibit N</u> 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 <u>Exhibit N</u>.
- 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) "<u>Force Majeure Event</u>" 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.
- 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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the Development Cure Period.
- 10.2 <u>No Liability If a Force Majeure Event Occurs</u>. 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, 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 <u>Notice for Force Majeure</u>. 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 <u>Termination Following Force Majeure Event</u>. 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 "<u>Defaulting Party</u>") 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;
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.214.2 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 ninety (90) days 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 one hundred eighty (180) 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 eure 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 one hundred eighty (180) daysexcept 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 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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;

<u>provided</u>, 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 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") 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 <u>Notice of Payment of Termination Payment</u>. 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 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 <u>No Consequential Damages</u>. 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 <u>Waiver and Exclusion of Other Damages</u>. 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 <u>EXHIBIT B</u> 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 <u>Seller's Representations and Warranties</u>. 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 <u>Buyer's Representations and Warranties</u>. 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 <u>General Covenants</u>. 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 <u>Seller Covenants</u>. 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 enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.
- (b) <u>Local Hire Requirement:</u> Seller shall 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 "<u>Local Hire Requirement</u>"). 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.
- (c) <u>Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats</u>. 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 15th 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 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 <u>Seller Commitments</u>. Seller shall comply with the Seller Commitments set forth in <u>Exhibit O</u> 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 <u>Diversity Reporting</u>. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as <u>Exhibit R</u>, 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.

Responsible Procurement. Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. 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. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility. Forced Labor.

ARTICLE 14 ASSIGNMENT

- 14.1 <u>General Prohibition on Assignments</u>. 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 direct or indirect 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 <u>Collateral Assignment</u>. 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, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

- (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.
- 14.3 <u>Permitted Assignment by Seller</u>. 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

- 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.
- 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 <u>Attorneys' Fees</u>. 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 "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "<u>Indemnified Party</u>") 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 <u>Claims</u>. 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 <u>Article 16</u>, 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) <u>Employer's Liability Insurance</u>. 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) <u>Workers Compensation Insurance</u>. 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) <u>Business Auto Insurance</u>. 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) <u>Construction All-Risk Insurance</u>. 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) <u>Contractor's Pollution Liability</u>. 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) <u>Subcontractor Insurance</u>. 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 dollarsOne 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) <u>Umbrella/Excess Liability Insurance</u>. 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 <u>Definition of Confidential Information</u>. The following constitutes "<u>Confidential Information</u>," 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.

- 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 <u>Irreparable Injury; Remedies</u>. 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 <u>Disclosure to Lenders, Etc.</u>. 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

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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 <u>Amendments</u>. 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 <u>No Waiver</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts</u>. 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 <u>Electronic Delivery</u>. 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 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 <u>No Recourse</u>. 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 TariffLaw 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.

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- 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.

[SELLER]	MARIN CLEAN ENERGY, a California joint powers authority
By: Name: Title:	By: Name: Title:
	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

	te—Site must be located in a DAC]_ I or some of the following APNs:—[Note — Site must be located in a DAC.]
County:	County, California
Type of Genera	ating Facility:
Guaranteed Ca	pacity: MW (AC)
Maximum Out	put: MW
Delivery Point:	Facility PnodeInterconnection Point
Interconnection	Point: [e.g., XX substation]
	nt: [e.g., NP-15 or PG&E DLAP (TH_NP15_GEN-APND). Use only if these subject to a Settlement Point adjustment. Otherwise, delete.]
Facility Pnode:	-
Participating Successor entity	Transmission Owner: Pacific Gas and Electric Company (PG&E) (or any

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. <u>Construction of the Facility</u>.

- "Construction Start" will occur upon satisfaction of the following: (i) Seller has a. 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. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" 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 <u>Exhibit H</u> (the "<u>COD Certificate</u>") (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 "<u>Commercial Operation Date</u>" 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. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation within ninety (90) 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. <u>Extension of the Guaranteed Dates</u>. 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 "<u>Development Cure Period</u>") 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.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed one hundred eighty (180) 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.

5. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) 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—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 Two Hundred Fifty Thousand Dollars (\$250,000) for each MWkW 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) <u>Facility Energy</u>. 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 one hundred and five percent (105%) 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 one hundred and five percent (105%) 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 (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh. 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 one hundred and ten percent (110%) 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 \$0.00/MWh.
- (c) Excess Settlement Interval Deliveries. If during any Settlement Intervalapplicable 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 the Settlement Intervalsuch measurement period, expressed in hours ("Excess MWh"), then the price applicable to all such excess MWh in such Settlement Intervalmeasurement period 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) <u>Test Energy</u>. Test Energy is compensated in accordance with Section 3.6.

(e)(d) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are 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

SCHEDULING COORDINATOR RESPONSIBILITIES

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) <u>Notices</u>. 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.

(e) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Seheduling 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.

- 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) <u>Dispute Costs.</u> 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) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master Data File and Resource Data Template</u>. 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.

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 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																								
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SEP																								
ОСТ																								
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 a	dditiona	l rows fo	or each	day in th	ie mont l	1)																		
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:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

<u>C</u> = 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 PointNP-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 Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and 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 (" <u>Certification</u> ") of Commercial Operation is delivered by [licensed professional engineer] (" <u>Engineer</u> ") to Marin Clean Energy, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Renewable Power Purchase Agreement dated (" <u>Agreement</u> ") by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.
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 (" <u>Installed Capacity</u> ").
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

			Capacity is delivered by [licensed professional
-	·		a California joint powers authority (" <u>Buyer</u> ") in Renewable Power Purchase Agreement dated
accordanc			Seller Entity] and Buyer. All capitalized terms
used in th	\	, , .	fined herein shall have the respective meanings
	to such terms in the		med herein shall have the respective meanings
I hereby c	ertify the performan	ce test for the Facil	ity demonstrated peak electrical output of MW
AC at the	Delivery Point, as	adjusted for ambier	nt conditions on the date of the performance test
("Installe	d Capacity").		
EXECUT	ED 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 (" <u>Certification</u> ") is delivered by [Seller Entity (" <u>Seller</u> ") to Marin Clean Energy, a California joint powers authority (" <u>Buyer</u> ") in accordance with the terms of that certain Renewable Power Purchase Agreement dated
(" <u>Agreement</u> ") 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 <u>Exhibit B</u> 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 " <u>Construction Start</u> "); 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
[SELLER ENTITY]
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\$[XXXXXXXX]
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. \$[XXXXXX] (United States Dollars [XXXXX] 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) 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-XXXX-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 " <u>Guaranty</u> ") is entered into as of [] (the " <u>Effective Date</u> ") by and between [], a [] (" <u>Guarantor</u> "), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, " <u>Buyer</u> ").		
	Recitals	
A.	Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [], 20	
В.	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.	
<u>Agreement</u>		
prompt pa from Selle Payment, in of the PP arising ou understand Amount of for-dollar of the ful Amount ar requirement any other in means of completely shall prom	paranty. For value received, Guarantor does hereby unconditionally, absolutely and y guarantee, as primary obligor and not as a surety, to Buyer the full, complete and yment by Seller of any and all amounts and payment obligations now or hereafter owing er to Buyer under the PPA, including compensation for penalties, the Termination indemnification payments or other damages, as and when required pursuant to the terms A (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or tof this Guaranty shall not exceed Dollars (\$	
2. De	emand 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 "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") 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, statue or regulation, in each such event in any such proceeding, or
 - (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
 - (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
 - (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

<u>provided</u> 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:

EXHIBIT M METERING DIAGRAM

EXHIBIT N

NOTICES

	MARIN CLEAN ENERGY, a California
("Seller")	joint powers authority ("Buyer")
All Notices:	All Notices:
	Marin Clean Energy
Street:	1125 Tamalpais Avenue
City:	San Rafael, CA 94901
Attn:	Attn: Contract Administration
Phone:	Phone: (415) 464-6010
Email:	Email: Procurement@mcecleanenergy.org
Reference Numbers:	Reference Numbers:
Duns:	Duns: 829602338
Federal Tax ID Number:	Federal Tax ID Number: 26-4300997
Invoices:	Invoices:
Attn:	Attn: Power Settlement Analyst
Phone:	Phone: (415) 464-6683
E-mail:	E-mail: Settlements@mcecleanenergy.org
Scheduling:	Scheduling:
Attn:	Attn: ZGlobal
Phone:	Phone: (916) 458-4080
Email:	E-mail: dascheduler@zglobal.biz
Confirmations:	Confirmations:
Attn:	Attn: Director of Power Resources
Phone:	Phone: (415) 464-6685
Email:	Email: Procurement@mcecleanenergy.org
Payments:	Payments:
Attn:	Attn: Power Settlement Analyst
Phone:	Phone: (415) 464-6683
E-mail:	E-mail: Settlements@mcecleanenergy.org
Wire Transfer:	Wire Transfer:
BNK:	BNK: River City Bank
ABA:	ABA: 121133416
ACCT:	ACCT: 811108740
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
	Hall Energy Law PC
Attn:	Attn: Stephen Hall
Phone:	Phone: (503) 313-0755
E-mail:	Email: steve@hallenergylaw.com
Emergency Contact:	Emergency Contact:
Attn:	Attn:
Phone:	Phone:
Email:	E-mail:
 :	

EXHIBIT O

SELLER COMMITMENTS

[Drafting Note: Parties to add further detail regarding these commitments as needed.] 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 34.0 (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; Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [describe community benefits]; and Other: [describe open space preservation, habitat improvement, or food programs].

EXHIBIT P

POLLINATOR SCORECARD



clovers and other non-native, non-invasive species beneficial to pollinators.

Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed land

pollinators" within	n the managed lands	cape of a PV solar facility.	
1. PERCENT OF PROPOSED SITE VEGETA DOMINATED BY POLLINATOR-FRIENDLY 31-45 % 46-60 %		6. SITE PLANNING AND MANAGEMENT Detailed establishment and management plan developed with funding/ contract to implement.	+ 15 points
61+ %	+15 points	☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.).	+5 points
Note: Projects may have "array" mixes and divelorder mixes; forb dominance should be averag site. The dominance should be calculated from t seeds vs. grass seeds (from all seed mixes) to be	ed across the entire otal numbers of forb	Total points 7. RE-VEGETATION ☐ Seed is applied at 50 PLS (Pure Live Seed)	+5 points
2. PLANNED % OF SITE DOMINATED BY COVER ☐ 26-50%	+5 points	per square foot 20% or more of the native species' seed has a local genetic origin within 175 miles of the site	+5 points
☐ 51-75%. ☐ 76-100%	+10 points +15 points	For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed Total points	+10 points
3. PLANNED SPECIES DIVERSITY (total # re-vegetation, including native grasses)		PESTICIDE RISK Planned on-site insecticide use or use of plant material pre-treated with	-40 points
9-11 species 12-15 species 16 or more species	+5 points +10 points +15 points	insecticides (excluding buildings/ electrical boxes, etc.) Perpetual bare ground under the	ni.
Total points Note: exclude invasives from species totals. 4. PLANNED SEASONS WITH AT LEAST 3	B BLOOMING	panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation	-40 points
SPECIES PRESENT (check all that apply) Spring (March-May) Summer (June-August)	+5 points +5 points	Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas	+10 points
☐ Fall (September-November) ☐ Winter (December-February) Total points	+5 points +5 points	9. OUTREACH/EDUCATION Site is part of a study with a university, research lab, or conservation	+5 points
Note: Check local resources for data on blood 5. ADDITIONAL HABITAT COMPONENTS		organization Grand total	
MILES (check all that apply) Native bunch grasses, leaf litter, woody debris, bare ground Native trees/shrubs	+2 points +2 points	Provides Exceptional Habitat Meets Pollinator Standards 7	>85 '0-84
☐ Clean, perennial water sources☐ Created nesting feature(s) (i.e., native bee houses) Total points	+2 points +2 points	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 percen		vertical projection of foliage as viewed	\$

PARTNERSHIP

Fresh Energy

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 *
2.	Business Name *
3.	Where is your business located/headquartered? *
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
	Mark only one oval. Yes
	○ No
	Qualified as WMDVLGBTBEs but not GO 156 Certified

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

8.	if certified, current annual revenue:
	Mark only one oval.
	Under \$1 million

Under \$5 million
Under \$10 million
Above \$10 million

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.thesupplierclearinghouse.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

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38 Instruments and related products39 Miscellaneous manufacturing industries41 Local and interurban passenger transit

10/9/2020	MCE Supplier Diversity Questionnaire
	42 Motor freight transportation and warehousing
Ī	43 U.S. Postal Service
	44 Water transportation
Ī	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 tradenondurable 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

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10/9/2020	MCE Supplier Diversity Questionnaire					
	88 Private households					
	89 Miscellane	ous services				
	egislative, and general government					
	blic order, and safety					
	93 Finance, ta:	xation, and monetary policy				
	tion of human resources					
	ntal quality and housing					
	96 Administrat	tion of economic programs				
	97 National se	curity 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.					
Sub	ocontractors	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 busine recent contract Mark only one o Yes No Not applica	val.				

https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit

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.
13.	If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.
sex,	suant to Proposition 209, MCE does not give preferential treatment based on race, color, ethnicity, or national origin. Providing information in these categories is onal 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."

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-tride 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.					
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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17.	If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?				
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				
	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				

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.

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ATTACHMENT F

Declaration of Dawn Weisz Supporting Confidentiality Claim for Submission of Marin Clean Energy Advice Letter 63-E, MCE Disadvantaged Communities Green Tariff Program 2022 Power Purchase Agreement Approval

In accordance with General Order 66-D, Decision ("<u>D.</u>") 06-06-066, D.08-04-023, D.20-07-005, and D.21-11-029 for the submission of confidential information to the California Public Utilities Commission ("<u>Commission</u>") in an Advice Letter ("<u>AL</u>") submission, Marin Clean Energy ("<u>MCE</u>") submits the following declaration in support of its claim of confidentiality for the below-specified information provided in MCE Advice Letter 63-E: *MCE Disadvantaged Communities Green Tariff Program 2022 Power Purchase Agreement Approval* ("<u>MCE AL 63-E"</u>").

The undersigned declares, under penalty of perjury, as follows:

- 1. In my capacity as the Chief Executive Officer, I have knowledge of the information provided in this declaration and am authorized to make this declaration on MCE's behalf.
- 2. In this Advice Letter Submission, MCE is securely and confidentially uploading the following documents to the Energy Division through the Commission's File Transfer Protocol ("FTP") system:
 - a. "MCE AL 63-E Confidential"
 - b. "MCE Confidentiality Declaration"
- 3. In this Advice Letter Submission, MCE is publicly submitting the following documents to the Energy Division and the consolidated service list for Rulemaking 14-07-002 and Application 16-07-015 via email:
 - a. "MCE AL 63-E Public"
 - b. "MCE Confidentiality Declaration"
- 4. Through this declaration, MCE requests that the redacted portions of the following documents be treated as confidential and kept under seal:
 - a. Confidential Attachment A Renewable Power Purchase Agreement between MCE and CES Electron Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA 1")
 - b. Confidential Attachment B Renewable Power Purchase Agreement between MCE and CES Electron Farm One, LLC ("Seller"), dated as of March 20, 2022 ("Conflitti PPA 2")
 - c. Confidential Attachment C Redline of Conflitti PPA 1

- d. Confidential Attachment D Redline of Conflitti PPA 2
- 5. This request for confidentiality is being made pursuant to the requirements and authority of Commission Decisions 06-06-066, 08-04-023, 20-07-005, and 21-11-029, Commission General Order 66-D, California Civil Code 3426, California Evidence Code 1060, and California Government Code Sections 6254(k), 6255(a).
- 6. The attached "Table of Confidential Information" identifies the specific information that is subject to this confidentiality request, provides specific citations to the authority upon which each request is based, provides a granular justification for confidential treatment, and specifies the length of time that the information is to be kept confidential.
- 7. MCE is complying with the limitations on confidentiality specified in the D.06-06-066 Matrix (as amended by subsequent decisions) for the types of data being submitted subject to a request for confidentiality.
- 8. To the best of my knowledge, the information being submitted subject to this request for confidentiality is not already public.
- 9. As set forth below, Confidential Attachments A, B, C, and D contain confidential and highly market-sensitive supporting documentation for MCE AL 63-E.
- 10. The redacted portions of Confidential Attachments A, B, C, and D cannot be aggregated, redacted, summarized, masked, or otherwise protected in a way that allows partial disclosure.
- 11. The following person is designated as the person for the Commission to contact regarding potential release of this information by the Commission:

Dawn Weisz Chief Executive Officer Marin Clean Energy 1125 Tamalpais Avenue San Rafael, California 94901 dweisz@mcecleanenergy.org

Executed on June 20, 2022 at San Rafael, California

/s/ Dawn Weisz

Dawn Weisz Chief Executive Officer Marin Clean Energy

TABLE OF CONFIDENTIAL INFORMATION MCE Advice Letter 63-E:

MCE Disadvantaged Communities Green Tariff Program 2022 Power Purchase Agreement Approval

Redaction Reference	Authority For Confidentiality	Justification for Confidential Treatment	Length of Time Data To Be
	Request		Kept Confidential
Confidential Attachment A –	ESP/CCA Matrix, Item IV(C)	Item IV(C) of the ESP/CCA Matrix	Under ESP/CCA Matrix, Item
Renewable Power Purchase Agreement		provides that contract summaries	IV(C) terms are confidential
between MCE and CES Electron Farm	Commission General Order 66-D	information is public, including	for three years from the date
One, LLC ("Seller"), dated as of March		counterparty, resource type, location,	the contract states deliveries to
20, 2022 ("Conflitti PPA 1")	California Civil Code 3426	capacity, expected deliveries, place of	begin, or until one year
		delivery, length of contract, and online	following expiration,
Confidential Attachment B –	California Government Code	date. All other terms qualify for	whichever comes first.
Renewable Power Purchase Agreement	Sections 6254(k), 6255(a)	confidential treatment. Confidential	
between MCE and CES Electron Farm		Attachments A, B, C, and D contain	
One, LLC ("Seller"), dated as of March	California Evidence Code 1060	information regarding contract price,	
20, 2022 ("Conflitti PPA 2")		milestone dates, expected generation, and	
		financial terms. This information is not	
Confidential Attachment C – Redline		listed as public in the matrix category, and	
of Conflitti PPA 1		therefore qualifies for confidentiality as	
		"other terms."	
Confidential Attachment D – Redline			
of Conflitti PPA 2		Additionally, Confidential Attachments A,	
		B, C, and D contain market-sensitive	
		and/or trade secret information. Even if no	
		other authority applied to protect this	
		information, the Commission must protect	
		this information because the public interest	
		in protecting the information clearly	
		outweighs the public interest in disclosure.	
		Disclosure here could provide valuable	
		market-sensitive information to market	
		participants, erode MCE's current or future	
		contract negotiations, and create distortions	
		in the resource adequacy and energy	
		markets. In contrast, the public interest is	
		minimal in public disclosure of pricing and	
		procurement data for a single load serving	
		entity.	