



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | FAIRFIELD | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY  
PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

**Executive Committee Meeting**  
**Wednesday, March 6, 2024**  
**12:00 P.M.**

*Public comments may be made in person or remotely via the details below.*

1125 Tamalpais Avenue, San Rafael, CA 94901 (MCE)  
2300 Clayton Road, Suite 1150, Concord, CA 94920 (MCE)

**Remote Meeting Participation for Members of the Public**

Video Conference: <https://t.ly/DnY7U>

Phone: Dial (669) 900-9128, Meeting ID: 861 2234 3784, Passcode: 415565

**Agenda Page 1 of 2**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 12.6.23 Meeting Minutes
  - C.2 Proposed Third Amended and Restated Schedule A.2 to the Master Services Agreement with Association for Energy Affordability
  - C.3 Proposed Amended and Restated Energy Storage Service Agreement with Cormorant Energy Storage, LLC
6. Proposed Fiscal Year 2024/25 Budget (Discussion/Action)
7. Draft 3.21.24 Board Agenda (Discussion)
8. Committee Matters & Staff Matters (Discussion)

9. Adjourn

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

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or [ada-coordinator@mcecleanenergy.org](mailto:ada-coordinator@mcecleanenergy.org) at least 72 hours before the meeting start time to ensure arrangements are made.

## DRAFT

### MCE EXECUTIVE COMMITTEE MEETING MINUTES

Wednesday, December 6, 2023

12:00 P.M.

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**Present:** Sally Wilkinson, City of Belvedere  
Eli Beckman, Town of Corte Madera  
David Fong, Town of Danville  
Gabriel Quinto, City of El Cerrito  
Max Perrey, City of Mill Valley  
Devin Murphy, City of Pinole  
Shanelle Scales-Preston, City of Pittsburg  
Eduardo Martinez, City of Richmond  
Cindy Darling, City of Walnut Creek

**Absent:** Edi Birsan, City of Concord  
Holli Thier, Town of Tiburon

#### Staff

**& Others:** Jesica Brooks, Board Clerk and Executive Assistant to the COO  
Darlene Jackson, Lead Board Clerk and Executive Assistant to the CEO  
Vicken Kasarjian, Chief Operating Officer  
Paul Krebs, Power Procurement Manager  
Justin Kudo, Senior Strategic Analysis and Rates  
Tanya Lomas, Internal Operations Assistant  
Catalina Murphy, General Counsel  
Ashley Muth, Internal Operations Assistant  
Garth Salisbury, Chief Financial Officer & Treasurer  
Enyo-Senyo-Mensah, Office Manager  
Daniel Settlemyer, Internal Operations Coordinator  
Maira Strauss, Manager of Finance  
Jenna Tenney, Manager of Communications & Community Engagement  
Jamie Tuckey, Chief of Staff  
Dawn Weisz, Chief Executive Officer

#### 1. Roll Call

Chair Perrey called the regular Executive Committee meeting to order at 12:07 p.m. with quorum established by roll call.

#### 2. Public Open Time (Discussion)

The Committee adjourned to Closed Session at 12:14 p.m. The Committee reconvened in open session at 2:00 p.m. General Counsel Catalina Murphy, reported on the Closed Session determination.

## DRAFT

3. Roll Call/Quorum
4. Board Announcements (Discussion)
5. Public Open Time (Discussion)
6. Report from Chief Executive Officer (Discussion)  
CEO Dawn Weisz introduced this item and addressed questions from the Committee.
7. Consent Calendar (Discussion/Action)
  - C.1 Approval of 11.1.23 Meeting Minutes
  - C.2 Proposed Second Amended and Restated Schedule A.1 to the Master Services Agreement with Franklin Energy Services, LLC
  - C.3 Proposed First Agreement with Resource Innovations, Inc.
  - C.4 Proposed Amended and Restated Power Purchase Agreement with Golden Fields Solar IV, LLC
  - C.5 Proposed Amended and Restated Power Purchase and Sale Agreement with G2 Energy, Ostrom Road, LLC

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

Action: It was M/S/C (Murphy/Darling) **to approve Consent Calendar C.1-C.5.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Thier).

**Note:** Chair Perrey made a few adjustments in the order of Agenda items to maintain quorum on time-sensitive items.

8. Revised MCE Implementation Plan to Include the City of Hercules (Discussion/Action)  
Jenna Tenney, Manager of Communications and Community Engagement, introduced this item and addressed questions from the Committee.

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

Action: It was M/S/C (Murphy/Darling) **to Approve Addendum No. 9 to the MCE Implementation Plan and Statement of Intent and direct Staff to submit to the CPUC.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Quinto, Scales-Preston and Thier).

## DRAFT

### 9. Charles F. McGlashan Advocacy Award Nominations (Discussion/Action)

Jenna Tenney, Manager of Communications and Community Engagement, introduced this item and addressed questions from the Committee.

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

Action: It was M/S/C (Beckman/Martinez) **to approve all three (3) nominees as 2023 Recipients of the Charles F. McGlashan Advocacy Award.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Quinto, Scales-Preston, and Thier).

### 10. Resolution No. 2023-14 Establishing the Annual Compensation for the Chief Executive Officer (Discussion/Action)

General Counsel Catalina Murphy introduced this item and addressed questions from the Committee.

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

Action: It was M/S/C (Martinez/Wilkinson) **to adopt the attached Resolution 2023-14 Establishing the Annual Compensation for the Chief Executive Officer.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan and Thier).

### 11. Proposed Energy Storage Service Agreement with Cormorant Energy Storage, LLC (Discussion/Action)

Paul Krebs, Power Procurement Manager, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Martinez/Beckman) **to Authorize execution of the Energy Storage Service Agreement with Cormorant Energy Storage, LLC for the purchase of all products associated with the project including energy, RA, and Ancillary Services.** Motion carried by unanimous roll call vote. (Absent: Directors Birsan, Quinto, Scales-Preston and Thier).

### 12. Fiscal 2023/24 Operating Fund Budget Update (Discussion)

Garth Salisbury, Chief Financial Officer & Treasurer, Justin Kudo, Senior Strategic Analysis & Rates, and Maira Strauss, Manager of Finance, presented this item and addressed questions from Committee members.

Chair Perrey opened the public comment period and there were comments from Member of the Public, Dan Segedin.

**DRAFT**

No Action Required.
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**13. Committee Matters & Staff Matters (Discussion)**

Comments were made by Director Wilkinson.

**14. Adjournment**

Chair Perrey adjourned the meeting at 3:04 p.m. to the next scheduled Executive Committee Meeting on January 3, 2024.

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Max Perrey, Chair

Attest:

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Dawn Weisz, Secretary



March 6, 2024

TO: MCE Executive Committee

FROM: Grace Peralta-Beasley, Senior Customer Programs Manager

RE: Proposed Third Amended and Restated Schedule A.2 to the Master Services Agreement with Association for Energy Affordability (Agenda Item #05\_C.2)

ATTACHMENTS:

- A. Third Amended and Restated Schedule A.2 to the Master Services Agreement with Association for Energy Affordability
- B. Master Services Agreement with Association for Energy Affordability
- C. First Amendment to the Master Services Agreement with Association for Energy Affordability
- D. Second Amendment to the Maser Services Agreement with Association for Energy Affordability

Dear Executive Committee Members:

**Summary:**

MCE has an existing Master Services Agreement<sup>1</sup> ("MSA") with the Association for Energy Affordability ("AEA") for program implementation services for several of MCE's residential energy efficiency programs, including MCE's multifamily energy efficiency offerings and MCE's Green Workforce Pathways program. The proposed Third Amended and Restated Schedule A.2 to the MSA ("3rd Schedule A.2") is primarily focused on the implementation of MCE's Multifamily Energy Savings ("MFES") and Low-Income Families and Tenants ("LIFT") Pilot programs.

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<sup>1</sup> MCE intends to amend the MSA to ensure the term aligns with the proposed Third Amended and Restated Schedule A.2 and to provide updated protocols regarding vendor access to MCE's Customer Relationship Management platform.

On September 27, 2012, your Board approved the First Agreement with AEA to provide services for the multifamily sector. For over ten years, AEA has supported MCE's energy efficiency goals by serving as technical consultants and program implementers for the MFES and LIFT programs. AEA's role has included conducting site assessments, providing technical assistance, supporting participating properties with scope development and project management, developing program guidelines, and program participant recruitment. AEA has proven itself as a proficient and professional program partner.

In the past, the milestone-based payment structure has been a barrier for multifamily properties which often have long project timelines, and require varying amounts of support based on site conditions and staffing constraints. To ensure participating properties receive the level of service they need, the proposed 3rd Schedule A.2 would adjust AEA's compensation for its work on the LIFT, MFES and MCE Healthy Homes programs and CRM integration to a time and materials basis. Work under this contract would be completed in close coordination with MCE staff who will provide direction on the level of effort required for each site. The proposed 3rd Schedule A.2 details the tasks and deliverables associated with this proposition.

**Fiscal Impacts:**

The full not-to-exceed value for the proposed 3rd Schedule A.2 is \$786,488, with a term that lasts until March 31, 2026. If approved, expenditures would be funded by MCE's Operating Budget and by energy efficiency program funds allocated to MCE by the California Public Utilities Commission. Proposed expenditures are accounted for in the proposed Fiscal Year 2024/25 budget.

**Recommendation:**

Approve the proposed Third Amended and Restated Schedule A.2 to the Master Services Agreement with Association for Energy Affordability (AEA).

**THIRD AMENDED AND RESTATED SCHEDULE A.2 TO THE  
MASTER SERVICES AGREEMENT  
BY AND BETWEEN MARIN CLEAN ENERGY  
AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)**

This THIRD AMENDED AND RESTATED SCHEDULE A.2 ("Agreement") is made and entered into on \_\_\_\_\_ by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA) (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and Contractor entered into a Master Services Agreement on March 18, 2021, as amended on March 10, 2022 and August 24, 2023, to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, MCE and Contractor entered into a Statement of Work on March 18, 2021, as amended on March 24, 2022 and August 31, 2023, to provide multifamily program services ("Schedule A.2"); and

WHEREAS, the parties desire to amend and restate Schedule A.2 and replace it with this Agreement;

NOW, THEREFORE, the parties agree that Schedule A.2 is hereby amended and restated in its entirety to read as follows.

Schedule A.2  
Statement of Work for Multifamily Programs

This THIRD AMENDED AND RESTATED Schedule A.2 is entered into on March 6, 2024 pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated March 18, 2021, and amended March 10, 2022 and August 24, 2023 ("MSA").

MCE and Contractor hereby agree that the Second Amended and Restated Schedule A.2 is terminated as of March 6, 2024.

Contractor shall provide the following Services under this Schedule A.2 as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Schedule A.2:

Contractor is the overall program provider for MCE's multifamily programs, which include the Multifamily Energy Savings ("MFES") Program and the Low Income Families and Tenant ("LIFT") Program, as requested and directed by MCE Customer Programs staff. Tasks and deliverables are described below.

For both the MFES and LIFT Programs, Contractor will:

- Provide information to be included in the monthly reports for the California Public Utilities Commission ("CPUC");
- Manage and update Contractor's MFES and LIFT Program databases;
- Work with MCE to make updates to the designs of the MFES and LIFT Programs as needed;
- Provide MFES and LIFT Program budgeting;
- Complete cost effectiveness tool ("CET")/total resource cost ("TRC") related activities;
- Communicate any relevant updates to property owners or managers ("Customers");
- Complete comprehensive assessments at Contractor-identified qualifying multifamily properties within MCE's service area;
- Build comprehensive reports based on results of the comprehensive assessments at Contractor-identified qualifying multifamily properties;
- Perform savings calculations upon rebate reservation and project close out;
- As needed, provide training and education to Customers as well as to the property's maintenance staff on the technical aspects of the equipment to be installed and/or of the measures installed so

that Customers and their property's maintenance staff will understand how to operate the installed equipment;

- Verify that installations meet minimum performance and programmatic specifications which include industry standards (for MFES, the programmatic specifications also include CPUC-approved work papers);
- Coordinate scope development and technical assistance with installer staff who perform technical assistance on other energy efficiency and electrification programs in the state;
- Coordinate project scope development with other partnerships, MCE and external programs as designated by MCE;
- Provide MCE with rebate and savings data for measures provided by the MFES and LIFT Programs so that MCE can process payments and comply with program reporting;
- Upon request by MCE, support MCE and MCE's Marketing, Education, and Outreach ("ME&O") activities;
- Verify property eligibility (applicable to both MFES and LIFT) and income eligibility (applicable only to LIFT);
- Complete combustion appliance safety ("CAS") testing when required;
- Coordinate as needed with Bay Area Multifamily Building Enhancements Program ("BAMBE") team and other multifamily program teams to ensure that MCE-qualified properties are being properly assessed for MCE rebate opportunities;
- Check-in with MCE via calls and coordination/reporting meetings, including quarterly reviews and forecasting, to ensure MFES and LIFT Program goals are met on time;
- Option to provide benchmarking, including energy consumption data analysis, before and after Program measures are installed;
- Meet the goals as listed in both the MFES Implementation Plan and LIFT Program Manual;
- Provide site visits, scope of work development, and verification to assist with dispersal of future MCE discretionary funds, such as MCE Local Fund Renewables or HPWH Incentives, to MFES and/or LIFT participating projects;
- For the LIFT Program, Contractor will provide Evaluation, Measurement, and Verification (EM&V) support.

In addition to MFES and LIFT Programs, Contractor will:

- Work with MCE staff and MCE's consultants on MCE CRM Integration, upon request from MCE; and
- Provide site visits, scope of work development, verification, and reporting to assist with dispersal of MCE Healthy Homes Project funds.

#### **Billing:**

For all tasks listed above, Contractor shall bill monthly on a time and materials (T&M) basis for all Services rendered the month prior according to the following hourly rate schedule:

TITLE	2024	2025
Senior Director	\$ 275	\$ 283
Director	\$ 203	\$ 211
Associate Director	\$ 174	\$ 181
Senior Manager	\$ 171	\$ 179
Manager	\$ 159	\$ 169
Senior Associate	\$ 146	\$ 155
Associate	\$ 129	\$ 137
Coordinator	\$ 117	\$ 124

Should another title/position be needed for work described herein that is not included in the above rate table, Contractor shall bill according to the rate schedule listed in Exhibit B of the Master Services Agreement dated **March 18, 2021**. The rate schedule listed in Exhibit B has additional titles/positions and their corresponding hourly rates listed.

### 2024-2025 Budget

The following are the budget amounts for each of Programs described herein. If it is anticipated that the budgeted amount may be exceeded, funds may move between categories upon written approval of the MCE Senior Customer Programs Manager, prior to Contractor exceeding those budgets.

<u>Program Budget Category</u>	<u>Not-to-Exceed AEA Time and Materials Budget</u>	<u>Budget Start and End Date</u>
2024 MFES Program	\$161,488 (Direct Implementation) \$40,000 (Marketing, Education, and Outreach)	Jan 1, 2024 – Dec 31, 2024
LIFT Program (2023 Rollover)	\$500,000 (all AEA Time and Materials categories)	Jan 1, 2024 – March 31, 2025
MCE Healthy Homes Project	\$50,000	Jan 1, 2024 – Dec 31, 2025
MCE CRM Integration	\$35,000	Jan 1, 2024 – Dec 31, 2025

Contractor will provide an itemized invoice to MCE Customer Programs team for all Services rendered the month prior and note on the itemized invoice which Services are part of the 2024 MFES Program, the LIFT Program, MCE Healthy Homes Project, or MCE CRM Integration. Payment of itemized invoice is subject to MCE Customer Programs team's written approval. In no event shall the total cost to MCE for the Services provided under this Statement of Work exceed the maximum sum of **\$786,488** for the term of the Agreement.

**Term of Statement of Work:**

This Statement of Work shall commence on **March 6, 2024** and shall terminate on **March 31, 2026**.

This Agreement constitutes the entire agreement by the Parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

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

MARIN CLEAN ENERGY:

CONTRACTOR:

By:

By:

Date:

Date:

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

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

# **MASTER SERVICES AGREEMENT**

## **BY AND BETWEEN**

### **MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)**

**THIS MASTER SERVICES AGREEMENT** ("Agreement") is made and entered into on **March 18, 2021** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA), a **California corporation** with principal address at: **5900 Hollis Street, Emeryville, CA 94608** (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

#### **RECITALS:**

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

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

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

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

#### **1. SCOPE OF SERVICES:**

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

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

The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement ("Term"). Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

#### **3. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum identified in each Statement of Work.

#### **4. TERM OF AGREEMENT:**

This Agreement shall commence on **March 18, 2021** ("Effective Date") and shall terminate on **March 31, 2023**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

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

**5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor represents, warrants and covenants that (a) [it is a **corporation** duly organized, validly existing and in good standing under the laws of the State of **California**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits, schedules and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit, schedule and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

- 5.2. COMPLIANCE WITH APPLICABLE LAW:** At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law")
- 5.3. LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.
- 5.4. NONDISCRIMINATORY EMPLOYMENT:** Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Contractor understands and agrees that Contractor is bound by and shall comply with the nondiscrimination mandates of all federal, state, and local statutes, regulations, and ordinances.
- 5.5. PERFORMANCE ASSURANCE; BONDING (REQUIRED IF CHECKED ☐).** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.
- 5.6. SAFETY (REQUIRED IF CHECKED ☒).** At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:
- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
  - (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
  - (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
  - (d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;
  - (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;
  - (f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and
  - (g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.
- 5.7. BACKGROUND CHECKS (REQUIRED IF CHECKED ☒).**
- (a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a "Contractor Party," and, collectively, the "Contractor Parties") having or requiring access to MCE's assets, premises, customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to perform the Services.
  - (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to perform the Services, or at any time after the individual's date of, assignment to perform the Services, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations ("RICO") Statute (18 U.S.C. Sections 1961-1968)).

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

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

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

**5.9. QUALITY ASSURANCE PROCEDURES (REQUIRED IF CHECKED ☒.** Contractor shall comply with any Quality Assurance Procedures provided by MCE. Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

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

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

## **6. INSURANCE:**

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

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

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

**6.1. GENERAL LIABILITY.** The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **two million dollars (\$2,000,000) with a four million dollar (\$4,000,000)** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

**6.2. AUTO LIABILITY (REQUIRED IF CHECKED ☒.** Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000).

**6.3. WORKERS' COMPENSATION.** The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.

**6.4. PROFESSIONAL LIABILITY INSURANCE** (REQUIRED IF CHECKED ☐). Contractor shall maintain professional liability insurance with a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

**6.5. PRIVACY AND CYBERSECURITY LIABILITY** (REQUIRED IF CHECKED ☒). Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

## **7. FINANCIAL STATEMENTS:**

Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

## **8. SUBCONTRACTING:**

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

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

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

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

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). MCE shall have the right, during regular business hours, to review and audit all Records during the Term and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises

or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

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

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

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **January 1, 2017**.

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

**10.3. MCE DATA SECURITY MEASURES.** Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **January 1, 2017**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

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

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

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

- a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.
- b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE on behalf and for the benefit of MCE's respective customers. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

- c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property.
- d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

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

## **11. FORCE MAJEURE:**

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

## **12. TERMINATION:**

- 12.1.** If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.
- 12.2.** Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.
- 12.3.** In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.6(b)) prepared for MCE before the effective date of such termination.
- 12.4.** MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

- 12.5.** Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.
- 12.6.** Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1 above) and Intellectual Property to MCE.
- 12.7.** Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.
- 12.8.** Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

### **13. ASSIGNMENT:**

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

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

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

### **15. DISPUTES:**

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

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

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

### **17. INDEMNIFICATION:**

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

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

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

**19. INVOICES; NOTICES:**

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

Email Address: invoices@mcecleanenergy.org

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

Contract Manager: Troy Nordquist

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (925) 378-6767

Notices shall be given to Contractor at the following address:

Contractor: Andrew Brooks

Address: 5900 Hollis St., Suite R2

Emeryville, CA 94608

Email Address: abrooks@aea.us.org

Telephone No.: (510) 431-1791

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

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

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>	<u>MCE'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Form of Statement of Work	<sup>DS</sup> LB	<sup>DS</sup> DW <sup>DS</sup> T/OB
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	<sup>DS</sup> LB	<sup>DS</sup> DW <sup>DS</sup> T/OB
<u>Schedule A.1</u>	<input checked="" type="checkbox"/>	Statement of Work for AERN Program	<sup>DS</sup> LB	<sup>DS</sup> DW <sup>DS</sup> T/OB
<u>Schedule A.2</u>	<input checked="" type="checkbox"/>	Statement of Work for Multifamily Programs	<sup>DS</sup> LB	<sup>DS</sup> DW <sup>DS</sup> T/OB
<u>Schedule A.3</u>	<input checked="" type="checkbox"/>	Statement of Work for Workforce Education and Training Program	<sup>DS</sup> LB	<sup>DS</sup> DW <sup>DS</sup> T/OB

**21. SEVERABILITY:**

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

**22. INDEPENDENT CONTRACTOR:**

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

**23. TIME:**

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

**24. THIRD PARTY BENEFICIARIES:**

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

**25. FURTHER ACTIONS:**

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

**26. PREPARATION OF AGREEMENT:**

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

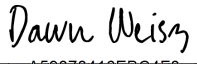
**27. COUNTERPARTS:**

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

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


**APPROVED BY**

**Marin Clean Energy:**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 A59878416EBC4F8...  
 Name: \_\_\_\_\_  
 Title: CEO  
 Date: 3/22/2021

DocuSigned by:  
  
 By: \_\_\_\_\_  
 5EFDDF8E1E86437...  
 Chairperson  
 Date: 3/20/2021

**CONTRACTOR:**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 AFAD2489924E46B...  
 Name: Andrew Brooks  
 Title: Director, West Coast Operations  
 Date: 3/31/2021

**MODIFICATIONS TO STANDARD SHORT FORM MASTER SERVICES AGREEMENT**

☐ Standard Short Form Master Services Agreement Content Has Been Modified

List sections affected: \_\_\_\_\_

\_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

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

**EXHIBIT A  
FORM OF STATEMENT OF WORK**

**Statement of Work – Schedule A.[#]**

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

[List scope of services]

**Billing:**

Contractor shall bill monthly and according to the rate schedule listed in Exhibit B of the Master Services Agreement dated **DATE**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$0,000** for the term of the Agreement.

**Term of Statement of Work:**

This Statement of Work shall commence on **DATE** and shall terminate on **DATE**.

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

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

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

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

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

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

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

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

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

Chairperson

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

**EXHIBIT B**  
**RATE SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the rate schedule as specified below and in accordance with the payment structure listed in a Statement of Work:

<b>Rate Schedule</b>	
<b>Position</b>	<b>Hourly Rate</b>
Director, West Coast	\$ 175.00
Director, Programs	\$ 175.00
Director, Technical Services	\$ 175.00
Senior Program Manager	\$ 165.00
Program Manager II	\$ 160.00
Program Manager	\$ 150.00
Associate Program Manager	\$ 135.00
Senior Project Manager	\$ 165.00
Project Manager II	\$ 160.00
Project Manager	\$ 150.00
Associate Project Manager	\$ 135.00
Senior Energy Engineer	\$ 165.00
Energy Engineer II	\$ 160.00
Energy Engineer I	\$ 150.00
Senior Energy Analyst	\$ 165.00
Energy Analyst III	\$ 160.00
Energy Analyst II	\$ 150.00
Energy Analyst	\$ 140.00
Associate Energy Analyst	\$ 130.00
Office Manager	\$ 125.00

Contractor shall bill according to these rates and the payment structure listed in a Statement of Work. Contractor shall not exceed the maximum contract sum listed in any Statement of Work.

**Schedule A.1**  
**Statement of Work for AERN Program**

This Schedule A.1 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor shall provide the following technical assistance services as part of the Advanced Energy Rebuild Napa Program under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

**Overview:**

MCE is administering the Advanced Energy Rebuild Napa Program (AERN) and issuing rebates to participants in an incentive program for homeowners in Napa County affected by wildfires. The AERN Program is based on the California Advanced Homes Program. Furthermore, MCE has received a grant from the Bay Area Air Quality Management District (BAAQMD) to pay for electrification rebates only. These rebates are incentives for affected homeowners to rebuild energy-efficient, sustainable homes through the installation of electrification measures identified in Table 1. Contractor is the technical assistance provider to program participants and for the BAAQMD rebates, Contractor will be paid separately from the grant funds.

**Task 1: Project administration**

Contractor will be available for planning and progress check-in meetings or calls. Contractor is responsible, in coordination with MCE, for the development of any program documentation, forms or reporting templates. All program application materials must be provided to MCE for approval by BAAQMD.

**Task 2: Provide information and technical support to residents and contractors about energy efficiency associated with the AERN Program, electrification measures associated with the BAAQMD grant, and eligibility for incentives.**

Contractor will provide information and education to residents and contractors interested in incorporating energy efficiency measures into homes being rebuilt after the wildfires in Napa County, for both the AERN and NAAQMD programs. Contractor will provide programmatic and technical support to explain the steps necessary for the participant to receive funding for the AERN Program and rebates from MCE in relation to the BAAQMD grant. Contractor will explain technologies being incentivized by MCE and the resulting energy and greenhouse gas impacts, and will answer owner or contractor technical questions. Eligible electrification measures and the applicable rebate amounts are listed in the table below (Table 1).

Table 1

ELIGIBLE ELECTRIFICATION COMPONENT	STANDARD	REBATE AMOUNT	LOW-INCOME QUALIFIED REBATE AMOUNT
Photovoltaic (PV)	Solar Panel system designed to fully offset annual electric usage with battery storage sufficient to hold 30% of one summer day's production	\$3,000	\$3,600
Heat Pump HVAC	EER of 12.5+, HSPF of 9.5+	\$1,500	\$1,800
Heat Pump Water Heater	NEEA tier 3.0+	\$1,000	\$1,200
Heat Pump Clothes Dryer	Energy Star Most Efficient Certified, Electric	\$800	\$960
Induction cooktop with or without range	Must use induction technology per manufacturer literature. Portable plug-in single burner or double burner appliances are not eligible.	\$800	\$960
Electric Vehicle Charging Station	Level 2 Charger	\$500	\$600
Smart Thermostat	Energy Star Certified Smart Thermostat	\$40	\$48
<b>Maximum rebate per dwelling unit</b>		<b>\$7,640</b>	<b>\$9,168</b>

**Estimated number of Leads: 60 homes**

**Time and Materials Budget for Tasks 1 and 2 Not to Exceed = \$18,068**

Time shall be based on the rate schedule listed in Exhibit B of the Master Services Agreement

**Task 3: Referral to PG&E**

Contractor will coordinate appropriate referrals of eligible program participants. Contractor will work in collaboration with PG&E to transfer all information to PG&E's technical assistance provider (currently TRC) for participants interested in PG&E's California Advanced Homes Program.

**Task 4: Ensure all incentive projects required documentation is collected, reviewed, and submitted to MCE**

Contractor will work with PG&E and/or PG&E's technical assistance provider to collect the required documentation from each program participant as follows:

- Application Number, Applicant Name, Phone Number, Alternate Phone Number, Email Address, Project Type, Project Address, City, Zip Code, Mailing Address (if different), CARE enrollment status, Description of proposed work/component, Manufacturer, Model Number of Component, Building Permit Agency, Building Permit number, Project Status, Date of HERS Final Inspection, CF-2R/CF-3R form on file (Yes or No), Proof of Purchase on file if required (Yes or No), Installation photo on file if required (Yes or No), Rebate Amount, Check Number, Date Check Issued, Notes

Contractor will review all documents for completeness per the above specifications, will ensure that all projects are properly permitted and that Energy Code documentation is filed as needed, and will track and maintain all project and document measures and participant details as specified above. Project information will also be provided to Napa County, BayREN, and PG&E by MCE.

**Task 5: Provide on-site technician assistance and/or site verification as needed for both BAAQMD funds and the AERN Program**

Upon request from the participant and pending approval from MCE, Contractor will provide onsite technical assistance to homeowners as it relates to the funded measures listed in Table 1, including coordinating with approved manufacturer's representatives and ensuring that these energy efficiency measures are installed per code requirements and properly permitted. Contractor will also provide onsite technical assistance to homeowners as it relates to the AERN Program. Contractor shall comply with all applicable state and local orders regarding COVID-19 when providing onsite technical assistance.

**Time and Materials Budget for Tasks 3-5 Not to Exceed = \$30,990**

Time shall be based on the rate schedule listed in Exhibit B of the Master Services Agreement.

**Billing:**

Contractor shall bill monthly and according to the rate schedule listed in Exhibit B of the Master Services Agreement dated **March 18, 2021**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$49,058** for the term of the Agreement.


**Term of Statement of Work:**

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

**IN WITNESS WHEREOF**, the parties have executed this Statement of Work – Schedule A.1 on **March 18, 2021**.

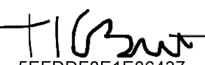
**APPROVED BY**

**Marin Clean Energy:**

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 By: A59878410EBC4F8...

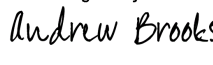
Name: \_\_\_\_\_

Date: 3/22/2021

DocuSigned by:  
  
 By: 5EFDDF8E1E88437...  
 Chairperson

Date: 3/20/2021

**CONTRACTOR:**

DocuSigned by:  
  
 By: AFAD2489924E46B...

Name: Andrew Brooks

Date: 3/31/2021

## Schedule A.2

### Statement of Work for Multifamily Programs

This Schedule A.2 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Contractor will serve as the overall program provider for MCE's multifamily programs, as requested and directed by MCE staff. Tasks and deliverables are described below:

#### 1. Multifamily Energy Savings (MFES) Program

Contractor will implement and provide technical consulting services for the MFES Program, including single-measure rebate and direct install (DI) offerings. The tasks are:

##### Single Measure Rebates and Direct Install (DI)

- Complete comprehensive assessments at properties identifying targeted measures and high total resource cost (TRC) opportunities within MCE's service area.
- Build targeted and comprehensive reports with results of the assessment.
- Provide technical assistance to customers.
- Verify installations meet minimum performance and programmatic specifications.
- Coordinate scope development with Bay Area Regional Energy Network (BayREN) and other program staff when co-leveraging with Bay Area Multifamily Building Enhancements Program (BAMBE) or other MCE programs (LIFT, MCE Healthy Homes, or other partnerships and programs as designated by MCE).
- Identify cost-effective DI measures.
- Work with MCE and its program partners to develop a list of candidate buildings to participate in DI opportunities.
- Coordinate DI activities, including maintenance staff training for direct installs, with customers and MCE staff.
- Provide MCE with savings data from DI activities.
- Verify smart thermostat compatibility prior to DI, if offered through the program.

##### Coordination with BayREN's BAMBE Program

Contractor provides a technical assistance and implementation role for BayREN's BAMBE program. Based on a joint coordination effort between MCE and BayREN, some projects will be able to utilize rebates from both entities on the same project (although savings for individual measures may only be claimed by one entity). Contractor will perform the following tasks to ensure seamless coordination:

- Regular check ins with BAMBE team to ensure that MCE qualified properties are being assessed for MCE rebate opportunities.
- Work with property owners or managers (customers) to develop a scope of work that would best leverage MCE and BAMBE rebate opportunities.
- Coordinate with BAMBE Technical Assistance on site visit.
- Report BAMBE coordination progress back to MCE.

##### Marketing & Outreach

Contractor will provide marketing and outreach services to support the MFES and LIFT programs. The tasks indicated below will be billed at a time and materials (T&M) rate. The tasks below may be performed by Contractor or a subcontractor to the Contractor. Marketing & Outreach tasks include:

- Development of marketing & outreach plan.
- Update marketing and outreach plan as needed.
- Development of program collateral.
- Lead generation through targeted outreach (property owners, contractors & partner organizations).
- Report back on marketing and outreach results and progress.

##### Additional Tasks

Contractor will perform the specific tasks indicated below at a T&M rate. The below tasks may apply to specific customers and/or monthly activities required of the Contractor. The tasks under this rate are:

- Monthly Reporting to CPUC
- Database management
- Program design
- Non-milestone-based project work (including combustion appliance safety (CAS) testing when required, project intake, common & exterior LED lighting measure completion, etc.)
- Check-in calls with MCE

- Meetings
- Training
- Benchmarking
- Budgeting
- Cost effectiveness tool (CET)/TRC related activities

## **2. Low Income Families and Tenants Pilot Program (LIFT)**

Contractor will implement and provide technical consulting services for the LIFT Program, which operates in conjunction with MFES and MCE Healthy Homes. The tasks include:

### LIFT Measure Rebates

- Work with MCE and its program partners to develop a list of candidate buildings to participate in LIFT.
- Facilitate the implementation of the energy efficiency measures under LIFT.
- Perform post installation Quality Assurance (QA) and Verification inspections to ensure that the measures were installed in such a manner that they will achieve the projected energy savings.
- Work with MCE to identify which data points should be collected and tracked for each project and required for the Evaluation, Measurement, and Verification (EM&V) process.
- Assist with training of contractors, building operators, and tenants as needed and when requested by MCE.
- Communicate program updates with customers including LIFT extensions and/or LIFT2.0 program approval.

### Direct Install

- Identify customers to receive DI services through the LIFT program.
- Coordinate DI activities, including maintenance staff training for direct installs, with customers and MCE staff.
- Provide MCE with savings data from DI activities.
- Verify smart thermostat compatibility prior to DI, if offered through the program.

### Marketing & Outreach

Contractor will provide marketing and outreach services to support the MFES and LIFT programs. The tasks indicated below will be billed at a T&M rate. The tasks below may be performed by Contractor or a subcontractor to the Contractor. Marketing & Outreach tasks include:

- Development of marketing & outreach plan.
- Development of program collateral.
- Lead generation through targeted outreach (property owners, contractors & partner organizations).
- Report back on marketing and outreach results and progress.

### Additional Tasks

Contractor will perform the specific tasks indicated below at a T&M rate. The below tasks may apply to specific customers and/or monthly activities required of the Contractor. The tasks under this rate are:

- Monthly Reporting to CPUC
- Database management
- Non-milestone-based project work (including CAS testing when required and project intake)
- LIFT heat pump technical assistance
- Check-in calls with MCE
- Meetings
- Tenant education development
- LIFT questionnaire development
- Training
- Benchmarking
- Budgeting
- BayREN coordination

## **3. MCE Healthy Homes Initiative**

Contractor will implement and provide technical consulting services for MCE's Healthy Homes Initiative which operates in conjunction with the other Multifamily offerings described herein. The tasks are:

### **1. Project management**

Contractor will oversee current projects in rebate reservation through to completion and manage new projects to spend down program budget.

- Property outreach and unit identification
- Single point of contact for participating properties
- Owner and contractor coordination

- Assessments and identification of upgrade opportunities
- Process Rebate Reservations with the properties
- Monitor project development
- Process Rebate approval packets with the properties

Project management budget not to exceed \$16,500.

2. Administration and Reporting

- Quarterly program and pipeline overview
- Ongoing budget tracking; included in quarterly reports and monthly invoice memos
- Regular meetings with MCE staff

Administration and Reporting budget not to exceed \$3,300.

3. Case Study Development

- Contractor will develop five (5) with client impact case studies that include resident quotes/statements

Case Study Development budget not to exceed \$3,300.

4. Survey development and analysis if LIFT surveys are unavailable

- Develop healthy home surveys to collect relevant resident information

Survey development and analysis budget will not exceed \$3,300.

**4. MCE's Electric Vehicle (EV) Program**

Contractor will perform EV feasibility assessments in conjunction with energy audits done for MCE's multifamily programs. The data collected will include the points listed below. The additional time needed beyond what is done for the multifamily programs will be billed at a T&M rate.

- Property Name
- Owner
- # of properties in that Owner's portfolio
- Owner Contact Information
- Property Manager Contact Information
- Facilities Manager Contact Information
- Address
- Property Class
- # of Units
- % of units that are deemed affordable housing
- # of total parking spaces
- # of non-designated (not assigned to a unit) parking spaces and % of those spaces that are open day-to-day
- # of ADA parking spaces
- # of EV charging ports currently installed
- available electrical capacity on the house (or common) panel(s) (most important technical data point)

**Billing:**

**1. Multifamily Energy Savings (MFES) Program: \$427,000**

Single Measure Rebates and DI: \$185,000

For implementing the MFES Program, Contractor will be compensated based on milestones achieved (Table 1). If the customer is also qualified for LIFT, Contractor will receive the LIFT adder as additional compensation due to the complexity of the requirements of LIFT. Units that receive direct install will be billed at a lower rate due to the elimination of the site visits and report.

Coordination with BayREN's BAMBE Program: \$100,000

When leveraging MCE's multifamily offerings with BAMBE projects, MCE will partially compensate Contractor, as BAMBE will cover other technical assistance costs. MCE will compensate Contractor as follows:

- For any LIFT customers also participating in the BAMBE Program, MCE will pay Contractor \$30 per apartment unit for energy audit report milestones due to the complexity of energy audit report requirements

around LIFT. MCE will also pay Contractor \$55 per unit that completes measures through LIFT. All other compensation shall be from BAMBE.

- MCE will provide rebates directly to customers in the MFES Program and LIFT program.
- Contractor will be reimbursed on a per unit basis if the property participates in an MCE multifamily program as outlined in Table 1.
- The NTE amount for this partnership is for a 2-year period.

Marketing & Outreach: Not to Exceed \$10,000

Additional Tasks: Not to Exceed \$132,000

## 2. Low Income Families and Tenants Pilot Program (LIFT): \$82,700

LIFT Measure Rebates and Direct Install: \$50,000

LIFT technical assistance will be provided in conjunction with the BAMBE program and/or MCE's MFES Program.

- For MCE-only LIFT projects (no BAMBE), Contractor will be reimbursed for each of the LIFT adders identified per the milestones achieved in Table 1, in addition to the standard Contractor Compensation values.
- When LIFT is paired with BAMBE, Contractor will only be reimbursed by MCE for the per apartment unit LIFT adder per the milestones achieved in Table 1.
- The NTE for LIFT is through July 31, 2021, unless otherwise notified in writing by MCE Contract Manager.

*Table 1. Compensation for Milestone(s) achieves – MFES Measure & LIFT Program*

Program Offering	Milestone	Contractor Compensation	LIFT adder
Single Measure Rebates	Intake	Time and Materials Rate (See Table 4)	
	Site Visit	\$35	\$40
	Energy Audit Report	\$25	\$30
	Rebate Reservation	\$0	\$0
	Rebate Approved	\$55	
Direct Install	Direct Install	\$40	

Marketing & Outreach: Not to Exceed \$8,000

Additional Tasks: Not to exceed \$24,700

## 3. MCE Healthy Homes: \$26,400

For implementing MCE Healthy Homes, Contractor will be compensated on a Time and Materials basis per the rate schedule in Section 5 with a not to exceed budget of \$26,400. Incentives for this sub-program will be dispersed separately between MCE and the customer. The tasks under this rate are:

Tasks	Estimated Hours	Not to Exceed Budget
2.1 Project Management	100	\$16,500
2.2 Administration/Reporting	20	\$3,300
2.3 Case Study Development	20	\$3,300
<b>Additional Services:</b>		
2.4 Survey Development & Analysis	20	\$3,300

## 4. MCE's EV Program: \$12,375

Contractor will perform EV feasibility assessments in conjunction with energy audits done for MCE's multifamily programs. The additional time needed beyond what is done for the multifamily programs will be billed based on T&M at the rate schedule listed in Exhibit B of the Master Services Agreement.

## 5. Overall Budget

The following are the budget amounts for each of the tasks and subprograms described herein. Budget amounts listed include both 2021 and 2022 program years. In situations where a budget amount may be exceeded, funds may be moved between categories with written approval of the MCE Customer Programs Manager, prior to Contractor exceeding those budgets.

Program	Task	Per Task NTE	Total Budget
MFES Program (Through April 2023)	Single Measure Rebates & Direct Install	\$185,000	\$427,500
	Coordination with BAMBE Program	\$100,000	
	Marketing & Outreach	\$10,000	
	Additional Tasks	\$132,500	
LIFT (Through July 2021) *	LIFT Measure Rebates & Direct Install	\$50,000	\$82,700
	Marketing & Outreach	\$8,000	
	Additional Tasks	\$24,700	
MCE Healthy Homes Program			\$26,400
MCE EV Program (Through April 2022) *			\$12,375
<b>TOTAL CONTRACT</b>			<b>\$548,975</b>

\*unless otherwise noted in writing by MCE Contract Manager

Contractor shall bill monthly and all time and materials rates shall be according to the rate schedule listed in Exhibit B of the MSA dated **March 18, 2021**. In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$548,975** for the term of the Agreement.

**Term of Statement of Work:**

This Statement of Work shall commence on **May 1, 2021** and shall terminate on **April 30, 2023**.

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

**APPROVED BY**

**Marin Clean Energy:**

DocuSigned by:  
By: *Dawn Weisz*  
A59878416EBC4F8...

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

Date: 3/22/2021

DocuSigned by:  
By: *[Signature]*  
5EFDDF8E1E86437...  
Chairperson

Date: 3/20/2021

**CONTRACTOR:**

DocuSigned by:  
By: *Andrew Brooks*  
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Name: Andrew Brooks

Date: 3/31/2021

### Schedule A.3

#### Statement of Work for Workforce Education and Training Program

This Schedule A.3 is entered into on **March 18, 2021** ("Agreement") pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and ASSOCIATION FOR ENERGY AFFORDABILITY, hereinafter referred to as "Contractor", dated **March 18, 2021** ("MSA").

Contractor will provide the following technical assistance services as part of the Workforce Education and Training Program (Program) as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

#### Task 1: Administration

Contractor will:

- Manage team project coordination meetings
  - General program meetings related to more than one task listed below, e.g. Workforce Engagement, Contractor Education, or Developing the Contractor Market; these meetings topics could be about budgets, reporting, invoicing, planning or other program-wide issues
- Develop and maintain Program database
- Respond to data requests regarding the Program
- Program accounting and invoicing
- Develop reports and documentation on overall Program achievements

#### Task 2: Workforce Engagement

**Task 2.a. – Partner with Inclusive Economics:** Contractor will work with Betony Jones of Inclusive Economics as a subcontractor to ensure the training and workforce development activities undertaken will improve conditions for workers. MCE may direct Contractor to work with a different individual of Inclusive Economics if the need arises.

Inclusive Economics' role will ensure any training designed by Contractor will have a positive impact on work quality under the Program, as well as help create more high-road jobs for workers.

***Task 2.a. 2021 Deliverables:** Meet with Inclusive Economics as needed to further inform Program development, and provide a summary report to MCE on Inclusive Economics' recommendations on program design to address workforce needs.*

**Task 2.b. – Industry Roundtables:** Contractor will leverage existing relationships with industry groups, such as MCE Community Power Coalition, Marin Builders Association, Rising Sun, Franklin Energy, trade unions, manufacturers, and others, to increase contractor participation in high-performance building training. These events will target participating contractor groups to get their perspective on high-performance buildings and the challenges they face as the industry continues to change.

To foster diversity, Contractor will ensure that a representative sample of participating contractor groups in MCE's service territory are invited to the event. Outreach efforts will include participating contractors from disadvantaged communities and minority-focused groups to ensure diversity, equity, and inclusion. These groups will be identified by leveraging partnerships with community-based organizations, properties located in disadvantaged communities that have participated in MCE's multifamily programs, and existing trade relationships.

***Task 2.b. 2021 Deliverables:** Provide a summary of roundtable discussion from final roundtable and the contact list of participants.*

**Task 2.c. – Direct Vendor Outreach:** Contractor will work with participating contractors and other vendors to determine the reasons why some declined to bid on MCE's Low-Income Families and Tenants (LIFT) Program. Contractor will qualitatively assess how much contingency and risk aversion was built into a vendor's bid and what actions can be taken to reduce vendor uncertainty around the project. Lastly, for winning participating contractors, Contractor will learn about some of the challenges participating contractors faced within the LIFT Program as they installed the heat pumps.

Contractor will leverage existing and develop new relationships with participating contractors and other vendors to gain more insight into the barriers to electrification and high-performance building work.

The information gathered will be used to: (a) inform future program design; (b) help identify the practical barriers to heat pump adoption that the installation community faces, and; (c) guide the development of training materials for participating contractors that have little experience in electrification.

***Task 2.c. 2021 Deliverables:** Summary of any additional participating contractor narratives or interviews that show recurring challenges that have been a barrier to electrification and high-performance building best practices.*

**Task 3: Participating Contractor Education**

**Task 3.a. – Participating Contractor Field Management:** Specific to the contractor trade, and with an aim to provide contractors with the fundamental building performance knowledge they need to understand, Contractor shall provide field mentorship based on 1) how to deliver maximum value and performance within their trade and 2) how their work can impact other building systems or trades that they do not work on.

Contractor will provide participating contractors with field mentorships through in-person or virtual field meetings. Each participating contractor field mentorship will consist of one session lasting one to four hours with a Contractor-provided trainer and the participating contractor. When possible, participating contractor field mentorships will be performed at a building site, but a separate classroom location or at the participating contractor's place of business will be used when necessary. Virtual field meetings will be performed when in-person field mentorships are not possible due to COVID-19 constraints.

Topics covered will include:

- Building science fundamentals:
  - Building Performance Institute (BPI) combustion safety & depressurization
  - Air sealing & insulation
  - Health & safety
  - Heat transfer and thermodynamics
- Review and explanation of minimum performance requirements
- Trade- or measure-specific best practices (as needed):
  - Ductless mini-split heat pumps
  - Heat pump water heaters (individual and/or central)
  - Hot water recirculation controls
  - Electric induction cooking
  - Air sealing and insulation
- Contractor-created handouts on basic building science (as necessary)

Contractor will track and report on the number of sessions and participating contractor participants.

*Task 3.a. 2021 Deliverables: Perform at least ten participating contractor field mentorship sessions.*

**Task 3.b. – Electrification Topic Workshops:**

**Develop and Deliver Workshops:** Contractor will develop and deliver workshops for each of the identified topics by either using either existing materials or creating original materials. Contractor will share developed workshop materials with MCE. Contractor will record the number of workshops given and participants in each workshop. Contractor will develop a tracking sheet that outlines each of the resources selected and/or developed.

*Task 3.b. 2021 Deliverables: Contractor will deliver six electrification workshops and maintain records on the number and type of attendees, as well as continue providing a resources tracking sheet to avoid duplicative educational efforts.*

**Task 3.c. – Electrification Topic Guides:** Using materials identified and developed through Tasks 3.a. and 3.b., Contractor will compile Electrification Topic Guides for individual topics, similar to those covered in the workshops.

*Task 3.c. 2021 Deliverables: Contractor will continue to create Electrification Topic Guides, creating documents that can be disseminated to program participants.*

**Task 4: Develop New Workforce for Participating Contractors**

**Task 4.a – Funded Contractor/Trades Internship:** Based on feedback from industry roundtables, participating contractor field mentorships, and direct vendor outreach, Contractor will prepare and provide a list of potential partners for a participating contractor on-the-job training opportunity for job seekers. Contractor will also prepare an outline of how the on-the-job training would operate.

The participating contractor/trade internship will provide job seekers with on-the-job training and education regarding high-performance building and the job seeker's specific trade.

On-the-job training opportunities will be funded by the Program. The 2020 program will begin development of the participating contractor on-the-job training opportunity to be launched in 2021.

*Task 4.a. 2021 Deliverables: Contractor will maintain a list of on-the-job training partners and update the on-the-job training operation outline as needed.*

**Task 4.b. – New Workforce Development Training Coordination:** Contractor will work with MCE and workforce development providers to develop a training and job procurement plan.

*Task 4.b. 2021 Deliverables: Contractor will maintain a database showing that contractor partners meet the qualification requirements for the program.*

**Program Timeline**

<b>Q1 2021*</b>	<ul style="list-style-type: none"> <li>Host industry roundtable to share program insight and solicit feedback</li> <li>Host 2 electrification topic workshops</li> <li>Perform 1 participating contractor field mentorship sessions</li> </ul>	<ul style="list-style-type: none"> <li>Participating contractor on-the-job training begins</li> <li>Engage with workforce development organizations</li> </ul>
<b>Q2 2021*</b>	<ul style="list-style-type: none"> <li>Host 2 electrification topic workshops</li> <li>Perform 3 participating contractor field mentorship sessions</li> </ul>	
<b>Q3 2021*</b>	<ul style="list-style-type: none"> <li>Host 1 electrification topic workshop</li> <li>Perform 3 participating contractor field mentorship sessions</li> </ul>	
<b>Q4 2021*</b>	<ul style="list-style-type: none"> <li>Host 1 electrification topic workshop</li> <li>Perform 3 participating contractor field mentorship sessions</li> </ul>	

\* Program Timeline subject to change at the mutual agreement of the parties.

**Billing:**

For services provided under this Schedule A.3 Contractor shall bill monthly for all hours where services were rendered according to the fee schedule below and the rate schedule included in Exhibit B of the Master Services Agreement.

		<b>2021 Program Year Fee Schedule*</b>	
<b>Task</b>	<b>Subtask</b>	<b>Estimated Hours</b>	<b>Estimated Budget</b>
Task 1: Administrative		<b>90</b>	<b>\$15,300</b>
Task 2: Workforce Engagement	Task 2.a.	10	\$1,700
	Task 2.b.	20	\$3,400
	Task 2.c.	10	\$1,700
	<b>Task 2 Total</b>	<b>50</b>	<b>\$6,800</b>
Task 3: Contractor Education	Task 3.a.	180	\$30,600
	Task 3.b.	220	\$37,400
	Task 3.c.	100	\$17,000
	<b>Task 3 Total</b>	<b>500</b>	<b>\$85,000</b>
Task 4: Develop Contractor Market	Task 4.a.	100	\$17,000
	Task 4.b.	210	\$35,700
	<b>Task 4 Total</b>	<b>300</b>	<b>\$52,700</b>
<b>PROGRAM TOTAL</b>		<b>940</b>	<b>\$159,800</b>

\*Fees billed shall include any necessary materials and mileage for onsite visits at the applicable standard reimbursement rate.

In no event shall the total cost to MCE for the services provided under this Statement of Work exceed the maximum sum of **\$160,000** for the term of the Agreement.

**Special Terms:**

Contractor agrees, and shall cause its subcontractors to agree, to not make any written or verbal statements about MCE that are disparaging, untrue, or inaccurate; doing so will allow MCE terminate this Schedule A.3 pursuant to Section 12 of the Master Services Agreement.

**Term of Statement of Work:**

This Statement of Work shall commence on **March 18, 2021** and shall terminate on **March 31, 2022**.

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

**APPROVED BY**

**Marin Clean Energy:**

DocuSigned by:  
By: Dawn Weisz  
A59878416EBC4F8...

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

Date: 3/22/2021

DocuSigned by:  
By: [Signature]  
6EFDDF8E1E86437...  
Chairperson

Date: 3/20/2021

**CONTRACTOR:**

DocuSigned by:  
By: Andrew Brooks  
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Name: Andrew Brooks

Date: 3/31/2021

# **FIRST AMENDMENT TO MASTER SERVICES AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)**

This FIRST AMENDMENT is made and entered into on 3/10/2022, by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA) (hereinafter referred to as "Contractor").

## RECITALS

WHEREAS, MCE and Contractor entered into a master services agreement on March 18, 2021 to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, Section 4 of the MSA stated the MSA shall terminate on March 31, 2023; and

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

WHEREAS, pursuant to Senate Bill 255, MCE is now required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises; and

WHEREAS, "Section 27. Diversity Survey" has been added to MCE's standard form to reflect this requirement; and

WHEREAS, MCE requires contractors to comply with certain protocols in order to access MCE's Customer Relationship Management software ("CRM Access Protocols"); and

WHEREAS, Contractor intends to access MCE's Customer Relationship Management software for programmatic needs; and

WHEREAS, the parties desire to amend the Agreement to add as Exhibit C the CRM Access Protocols;

NOW, THEREFORE, the parties agree to modify Section 4, add Section 27, modify Section 28, and add Exhibit C, as set forth below.

## AGREEMENT

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

### **TERM OF AGREEMENT:**

This Agreement shall commence on **March 18, 2021** (Effective Date"), and shall terminate on **March 31, 2024**, unless earlier terminated pursuant the terms and conditions set forth in Section 12.

2. The following "Section 27. Diversity Survey" is hereby added to the Agreement to follow "Section 26. Preparation of Agreement":

### **27. DIVERSITY SURVEY:**

Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: <https://forms.gle/DUBkcdFCskb7NNcA8> (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this

Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

3. The previous "Section 27. Counterparts" is now "Section 28. Counterparts."
4. The following Exhibit C is hereby added to the Agreement to follow Exhibit B:

### **EXHIBIT C MCE CRM ACCESS PROTOCOLS**

Contractor shall provide the following protective measures under the Agreement in order to access the MCE Customer Relationship Management software ("MCE CRM") according to program needs up to the time/fees allowed under this Agreement.

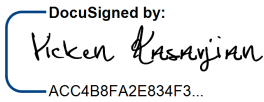
This Exhibit C is applicable to all existing and any future schedules under this MSA.

In order for Contractor to access MCE CRM, Contractor must first agree to and comply with the following protocols:

1. MCE CRM access is subject to the NDA between the Parties dated January 1, 2017.
  2. MCE CRM login information, passwords, and any information retrieved from MCE CRM shall be treated as Confidential Information.
    - o Confidential Information shall have the same meaning as defined in the MCE NDA between the Parties dated January 1, 2017.
    - o No Contractor employee is to give, tell, or hint at their login information or password to another person under any circumstance.
    - o MCE CRM passwords are required to be changed every 90 days.
    - o MCE encourages strong passwords (such as minimum character length, and use of special characters) that are not reused for other logins.
    - o MCE CRM shall only be accessed from an Internet Protocol (IP) address in the United States.
  3. MCE CRM access shall be provided through MCE's selected Single Sign-On (SSO) provider, Okta, Inc. or any MCE-designated SSO provider.
  4. MCE CRM access shall be restricted.
    - o MCE CRM access shall only be provided to those employees of Contractor who have a "need to access" such information in the course of their duties with respect to Contractor's Services.
      - Contractor employees who access MCE CRM shall only update or view fields related to the tasks assigned.
      - Contractor shall maintain a list of Contractor employees that have been authorized to access MCE CRM.
        - The list shall be updated and verified by Contractor quarterly, upon Contractor employee turnover, and upon MCE's request.
    - o Contractor employees who access MCE CRM shall first review and agree to be bound by these MCE CRM Access Protocols.
  5. In the event of an employment status change for a Contractor employee who had been granted access to MCE CRM, Contractor shall provide the following information to MCE:
    - o Name and email of pertinent Contractor employee.
    - o Notification to MCE within 3 days of employment status change.
  6. Information retrieved from MCE CRM shall not be recorded or reproduced in any way.
5. Except as otherwise provided herein all terms and conditions of the MSA shall remain in full force and effect.

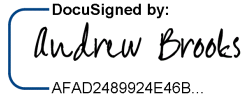
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

MARIN CLEAN ENERGY:

By:  ACC4B8FA2E834F3...

Date: 3/8/2022

CONTRACTOR:

By:  AFAD2489924E46B...

Date: 3/10/2022

## SECOND AMENDMENT TO MASTER SERVICES AGREEMENT BY AND BETWEEN MARIN CLEAN ENERGY AND ASSOCIATION FOR ENERGY AFFORDABILITY (AEA)

This SECOND AMENDMENT is made and entered into on 8/24/2023 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and ASSOCIATION FOR ENERGY AFFORDABILITY (AEA) (hereinafter referred to as "Contractor").

### RECITALS

WHEREAS, MCE and Contractor entered into a master services agreement on March 18, 2021, and amended on March 10, 2022, to provide energy efficiency technical assistance services ("MSA"); and

WHEREAS, Section 4 of the MSA, as amended, stated the MSA shall terminate on March 31, 2024; and

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

NOW, THEREFORE, the parties agree to modify Section 4, as set forth below.

### AGREEMENT

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

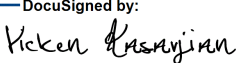
#### **TERM OF AGREEMENT:**

This Agreement shall commence on **March 18, 2021** ("Effective Date"), and shall terminate on **March 31, 2025**, unless earlier terminated pursuant the terms and conditions set forth in Section 12.

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

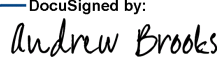
IN WITNESS WHEREOF, the parties hereto have executed this SECOND AMENDMENT on the day first written above.

MARIN CLEAN ENERGY:

DocuSigned by:  
By:   
ACC4B8FA2E834F3...

Date: 8/24/2023

CONTRACTOR:

DocuSigned by:  
By:   
AFAD2489924E46B...

Date: 8/29/2023



March 6, 2024

TO: MCE Executive Committee

FROM: Paul Krebs, Senior Power Procurement Manager

RE: Proposed Amended and Restated Energy Storage Service Agreement with Cormorant Energy Storage, LLC (Agenda Item #05\_C.3)

ATTACHMENT: Amended and Restated Energy Storage Agreement with Cormorant Energy Storage, LLC (With redactions)

Dear Executive Committee Members:

**Background:**

On July 21, 2022, MCE's Board approved a contract with Hecate Grid Humidor Storage LLC (Hecate) for Resource Adequacy. This 185 Megawatt (MW) stand-alone energy storage project has a guaranteed commercial operation date (COD) of April 1, 2024. Over the last year, MCE has been notified about several significant issues that are hindering Hecate's ability to develop the project. To date, Hecate has not been able to provide a firm COD nor a clear path to a completed project. At this point, MCE doesn't see a viable path forward for this project and has therefore terminated the contract with Hecate. This project was an important part of MCE's Mid-Term Reliability (MTR) compliance obligation; therefore, staff are recommending replacement with projects that have more certainty.

Arevon Energy submitted an offer for the Cormorant Energy Storage, LLC project ("Cormorant") to MCE under MCE's 2023 Open Season solicitation. Cormorant is a new stand-alone MTR eligible battery energy storage system ("BESS") that will come online in 2026. The Cormorant energy storage service agreement with Cormorant was approved by MCE's Board on December 1, 2023.

Arevon is offering MCE an additional 58 MW of capacity from Cormorant for a total of

188 MW under this Amended and Restated Energy Storage Service Agreement which will partially replace capacity from Hecate for MTR compliance. In the coming months, Staff will be bringing additional contracts for approval for full replacement of the Hecate project.

**Summary:**

The Cormorant project will be sited in San Mateo County. The project is at a mature stage in the development process with an executed interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

The terms of the attached Amended and Restated Energy Storage Service Agreement are identical to those approved by MCE's Board on December 1, 2023, except to allow for the addition of 58 MW. The document outlines the terms for the guaranteed delivery of 188 MW and 4 hours of storage capacity as well as MCE's rights to the associated energy, Resource Adequacy ("RA") and Ancillary Services products.

Staff recommends moving forward with this additional capacity.

**Rationale:**

- The additional 58 MW of capacity will help fill the gap created by the loss of the Hecate project.
- The BESS project can be charged during low price, low demand periods and dispatched in high price, high demand periods.
- RA capacity delivered by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications, and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- The project is being developed and will be operated by an experienced team. Arevon has a track record of successfully delivering projects to load serving entities including Central Coast Community Energy, San Diego Community Power, Los Angeles Department of Water & Power, Pacific Gas & Electric and Sothern California Edison.

**Contract Overview**

- Amended and Restated Project: 188 MW, 4-hour duration lithium-ion BESS
- Products under proposed contract: Energy, RA, Ancillary Services
- Price: Fixed with no escalation for the Delivery Term
- Project location: San Mateo County, California
- Guaranteed commercial operation date: June 1, 2026
- Contract term: 15 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor requirement: Union contractors would be required for all on-site construction trades

- Community Benefit Package: Up to \$500,000 to be spent at MCE's discretion on a package of community benefits that could include apprenticeships, scholarships, food programs, open space preservation, parks, etc.

**Additional Information:**About Arevon Energy

- Headquartered in Scottsdale, Arizona with 205 full-time employees.
- Formed by Capital Dynamics' Clean Energy Infrastructure business as an asset management service provider in 2017. Arevon Energy, Inc. was created in 2021 as a combination of Capital Dynamics' Clean Infrastructure Team and Arevon Asset Management.
- Backed by CalSTRS, the United States' second-largest public pension fund, APG, a Dutch pension fund, and a wholly owned subsidiary of the Abu Dhabi Investment Authority.
- Arevon's global fleet of PV Solar and Onshore Wind assets exceeds 6,500 MW (enough energy to power approximately 2.3 million homes), representing over \$9 billion in invested capital. Arevon operates the 2nd largest portfolio of solar assets in North America, with over 3,500 MW of commercially operating generation and battery storage assets.

**Fiscal Impacts:**

There would be no impact on the Fiscal Year 2023/24 budget. Incremental costs would be accounted for starting in FY 2026/27.

**Recommendation:**

Authorize execution of the Amended and Restated Energy Storage Service Agreement with Cormorant Energy Storage, LLC.

**AMENDED AND RESTATED**  
**ENERGY STORAGE SERVICE AGREEMENT**  
**COVER SHEET**

**Seller:** Cormorant Energy Storage, LLC (“**Seller**”)

**Buyer:** Marin Clean Energy, a California joint powers authority (“**Buyer**”)

**Description of Facility:** A 188 MW/752 MWh battery energy storage facility located in San Mateo County, in the State of California, as further described in Exhibit A (the “**Facility**”), and subject to reduction in capacity pursuant to Paragraph 5 in Exhibit B.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	Completed
Executed Interconnection Agreement	Completed
Obtain Federal and State Discretionary Permits	10/1/2024
Network Upgrades Completed	3/31/2026
Procure Major Equipment	3/31/2025
Expected Construction Start Date	10/31/2025
Initial Synchronization	1/31/2026
Expected Commercial Operation Date	6/1/2026
Full Capacity Deliverability Status Obtained	Completed

**Delivery Term:** The period for Product delivery will be for fifteen (15) Contract Years.

**Storage Contract Capacity:** 188 MW for four (4) hour discharge

**Storage Contract Output:** 752 MWh

**Guaranteed Efficiency Rate:**

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	

6			
7			
8			
9			
10			
11			
12			
13			
14			
15			

**Minimum Efficiency Rate:** [REDACTED]

**Contract Price**

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	[REDACTED]

**Delivery Point:** the PNode assigned to the Facility by the CAISO, which shall be located at the PG&E Martin 115 kV Substation

**Product:**

- ☒ Discharging Energy
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Full Capacity Deliverability Status
- ☒ Ancillary Services

**Scheduling Coordinator:** Buyer or Buyer's agent

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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Exhibit C	Compensation
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Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Other Seller Commitments
Exhibit T	Diversity Reporting

## **AMENDED AND RESTATED ENERGY STORAGE SERVICE AGREEMENT**

This Amended and Restated Energy Storage Service Agreement (“**Agreement**”) is entered into as of the last dated signature on the signature page hereto (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### **RECITALS**

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

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

**WHEREAS**, the Parties entered into that certain Energy Storage Service Agreement, dated as of January 12, 2024 (the “**Original Agreement**”); and

**WHEREAS**, the Parties desire to amend and restate the Original Agreement and agree that this Agreement replaces and supersedes the terms of the Original PPA in its entirety.

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

### **ARTICLE 1 DEFINITIONS**

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.5(d).

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

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, and the Cover Sheet.

**“Ancillary Services”** means those Ancillary Services (as defined in the CAISO Tariff) set forth in Section 4.5(f).

**“Approved Maintenance Hours”** means one hundred seventy six (176) hours per Contract Year of Planned Outages for Facility maintenance scheduled in accordance with Section 4.6(a).

**“Automated Dispatch System”** or **“ADS”** has the meaning set forth in the CAISO Tariff.

**“Availability Adjustment”** has the meaning set forth in Exhibit C.

**“Availability Adjustment Payment”** has the meaning set forth in Exhibit C.

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

**“Baseline Tax Credit Percentage”** has the meaning set forth in Exhibit C.

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

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

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time Charging Energy and Discharging Energy.

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

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

**“CAISO Operating Order”** means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO Tariff will control.

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and deliver to the Delivery Point energy, at a particular moment, and that can be purchased, sold and/or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

**“Capacity Damages”** has the meaning set forth in Section 5 of Exhibit B.

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, 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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

**“Charging Energy”** means the energy delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to Seller, directing the Facility to charge with Charging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice.

**“Claim”** has the meaning set forth in Section 16.2.

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

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

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2.

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

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

“**Compliance Actions**” has the meaning set forth in Section 3.5(b).

“**Compliance Costs**” has the meaning set forth in Section 3.5(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.5(a).

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

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

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

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

“**Contract Price**” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is the Storage Rate.

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

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and 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 Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged or financed its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

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

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

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements)

or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Fitch or Moody's.

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

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

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

(d) any emergency or other electrical system condition that reasonably prevents (i) Buyer from receiving Discharging Energy at the Delivery Point or (ii) Seller from receiving Charging Energy at, and/or delivering Discharging Energy to, the Delivery Point, in each case consistent with the Operating Restrictions and Prudent Operating Practice; or

(e) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

**"Curtailed Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailed Order.

**"Damage Payment"** means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

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

**"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).

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

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

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

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

**“Discharging Energy”** means the energy delivered from the Facility to the Delivery Point, net of Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

**“Discharging Notice”** means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

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

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

**“Efficiency Rate”** means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

**“Electrical Losses”** means all transmission or transformation losses (a) between the Delivery Point and the Facility Meter for the receipt of Charging Energy and (b) between the Facility Meter and the Delivery Point for the delivery of Discharging Energy, each calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

**“Executed Interconnection Agreement Milestone”** means the date for completion of execution of the Interconnection Agreement by Seller (or Seller’s Affiliate) and the PTO as set forth on the Cover Sheet.

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

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

**“Facility”** means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver

Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

**“Facility Meter”** means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy delivered to the Delivery Point. For clarity, the Facility may contain multiple measurement devices that will make up the Facility Meter, including the CAISO Approved Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location of the Facility Meter, as shown in Exhibit R.

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

**“Financed Tax Credit Percentage”** has the meaning set forth in Exhibit C.

**“Fitch”** means Fitch Ratings Ltd., or its successor.

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

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

**“Full Capacity Deliverability Status”** has the meaning as such term is defined 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.

**“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. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of 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.

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

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

**“Guaranteed Efficiency Rate”** means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet.

**“Guaranteed RA Amount”** means the Qualifying Capacity of the Facility.

**“Guaranteed Storage Availability”** has the meaning set forth in Section 4.8.

**“Guarantor”** means, with respect to Seller, (a) an Affiliate of Seller with a tangible net worth of [REDACTED] or (b) any Person reasonably acceptable to Buyer, that (i) a tangible net worth of [REDACTED], (ii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iii) executes and delivers a Guaranty for the benefit of Buyer.

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

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

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

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

**“Installed Battery Capacity”** means the maximum dependable operating capability of the Facility to discharge electric energy, not to exceed the Storage Contract Capacity set forth on the Cover Sheet, as measured in MW<sub>AC</sub> at the Delivery Point, that achieves Commercial Operation, as determined pursuant to the Storage Capacity Test undertaken in connection with delivery of Exhibit I and as adjusted for ambient conditions on the date of such Storage Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto; *provided* that if the results of such Storage Capacity Test exceed the amount set forth as the Storage Contract Capacity on the Cover Sheet of this Agreement, then the Installed Battery Capacity shall be equal to the amount set forth as the Storage Contract Capacity on the Cover Sheet of this Agreement.

**“Interconnection Agreement”** means that certain Large Generator Interconnection Agreement dated as of December 28, 2021, as amended, associated with CAISO Queue position 1552, by and among Cormorant Energy Storage, LLC, the CAISO, and Pacific Gas and Electric Company, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

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

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

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

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

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or Seller’s 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, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or the U.S. branch of a foreign bank, which such bank having assets of ■■■■■

[REDACTED], and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K. To the extent Seller's preferred standby letter of credit issuer requests reasonable changes to the form of Exhibit K, Buyer shall consider such requested changes in good faith.

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

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

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

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

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

**"Maximum Charging Capacity"** has the meaning set forth in Exhibit A.

**"Maximum Discharging Capacity"** has the meaning set forth in Exhibit A.

**"Maximum State of Charge"** has the meaning set forth in Exhibit Q.

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

**"Minimum Efficiency Rate"** has the meaning set forth on the Cover Sheet.

**"Minimum State of Charge"** has the meaning set forth in Exhibit Q.

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

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

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

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

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

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

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

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

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

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

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

**“On-Peak Hour”** means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

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

**“Original Agreement”** has the meaning set forth in the Recitals.

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

**“Permitted Transferee”** means (i) any Affiliate of Seller or (ii) an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) Has at least [REDACTED] of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such operations experience to operate the Facility.

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

**“Planned Outage”** has the meaning set forth in Section 4.6(a).

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

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

**“Production Tax Credits”** or **“PTCs”** means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

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

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

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

**“RA Deficiency Amount”** means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(b).

**“RA Plan”** means each of (a) Buyer’s monthly or annual “Resource Adequacy Plan” (as defined in the CAISO Tariff) filed with the CAISO, and (b) Buyer’s monthly or annual resource adequacy plans filed with the CPUC.

**“RA Shortfall”** has the meaning set forth in Section 3.3(b).

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.3(b), any month during the Delivery Term during which there is an RA Shortfall.

**“Real-Time Forecast”** means any Notice of any change to the Storage Capacity delivered by or on behalf of Seller pursuant to Section 4.3(c).

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

**“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.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month, including, as applicable, any Local Capacity Area Resources, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits; provided that any Replacement RA capacity must be communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer no later than the Notification Deadline.

**“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 associated with the Facility.

**“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 or Laws 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 S&P Global Inc.) or its successor.

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

**“Scheduled Energy”** means the Charging Energy schedule or Discharging Energy schedule, as applicable, that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or CAISO 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 8.8.

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

“**Seller Termination Payment**” has the meaning set forth in Section 11.9.

“**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; *provided*, that the Parties agree that the value of Capacity Attributes are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or energy storage facilities owned by Seller other than the Facility.

“**Showing Month**” means the calendar month of the Delivery Term that is the subject of the applicable compliance showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly compliance showing made in June is for the Showing Month of August.

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

“**Site Control**” means that Seller or a Seller Affiliate: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

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

**“Station Use”** means energy that is consumed (and not stored for resale) within the Facility for purposes other than for supporting a resale of energy back to the wholesale markets, which includes energy consumed to power information technology, lighting, ventilation, and safety systems, (or as otherwise defined as retail loads by the retail energy provider) except during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

**“Storage Capacity”** means (a) the maximum dependable operating capability of the Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide in accordance with the Operating Restrictions as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to discharge electric energy.

**“Storage Capacity Test”** means any test or retest of the Storage Contract Capacity of the Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Contract Capacity”** means the total capacity (in MW<sub>AC</sub>) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5 of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test; *provided* that if the results of the most recently performed Storage Capacity Test exceed the amount set forth as the Storage Contract Capacity on the Cover Sheet of this Agreement, then the Storage Contract Capacity shall be equal to the amount set forth as the Storage Contract Capacity on the Cover Sheet of this Agreement.

**“Storage Contract Output”** means the maximum Stored Energy Level (in MWh-<sub>AC</sub>) of the Facility available to be used by Buyer pursuant to this Agreement, initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test; *provided* that if the results of the most recently performed Storage Capacity Test exceed the amount set forth as the Storage Contract Output on the Cover Sheet of this Agreement, then the Storage Contract Output shall be equal to the amount set forth as the Storage Contract Output on the Cover Sheet of this Agreement.

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

**“Stored Energy Level”** means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

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

**“Tax”** or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term,

including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

**“Tax Credits”** means PTCs, ITCs and any other state, local or federal tax credit, depreciation benefit, amortization, deduction, expense, exemption, preferential rate, and/or tax benefit or incentive associated with the operation of, construction, investments in or ownership of the Facility or any part thereof, including any cash payment or grant.

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

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

**“Test Product”** means Product delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver any Product to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (ii) ending upon the occurrence of the Commercial Operation Date.

**“Transformer Failure”** means a failure of all or part of the Facility’s generator step-up transformer(s) that results in Seller being unable to receive Charging Energy or deliver Discharging Energy provided such transformer is maintained by Seller in accordance with Prudent Operating Practices.

**“Transmission Provider”** means any entity or entities transmitting or transporting the Charging Energy and Discharging Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

**“Ultimate Parent”** means

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 Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

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

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

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the 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) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(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 set forth herein ("Contract Term"); *provided, however*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

### 2.2 Conditions Precedent.

(a) The Delivery Term shall not commence until Seller completes each of the following conditions:

(i) Seller has delivered to Buyer (i) a completed Commercial Operation Date Certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a completed certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Battery Capacity on the Commercial Operation Date;

(ii) 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 delivered to Buyer;

(iii) An Interconnection Agreement between Seller (or Seller's Affiliate) and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(iv) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

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

(vi) All applicable regulatory authorizations, approvals and permits required for 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, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(vii) Seller has certified in writing to Buyer that Seller has complied with the prevailing wage and project labor agreement requirements set forth in Section 13.4, and provided reasonably requested documentation demonstrating such compliance;

(viii) Seller has achieved Full Capacity Deliverability Status for the Facility and provided Buyer a copy of the CAISO's Full Capacity Deliverability Status Finding for the Facility;

(ix) Seller has certified in writing to Buyer that Seller has satisfied the other Seller commitments set forth in Exhibit S, and provided reasonably requested documentation demonstrating such compliance;

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

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

**2.3 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 Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide a Progress Report to Buyer in the form set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. 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 from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.4 Remedial Action Plan.** If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or within ten (10) Business Days of the 90<sup>th</sup> day after such missed Milestone completion date, as applicable), 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, if known (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 a Remedial Action Plan with respect to any subsequent Milestones in accordance with this Section 2.4. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations

under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

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

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Capacity Attributes.** Seller shall have obtained Full Capacity Deliverability Status by the Commercial Operation Date. Seller shall maintain either Full Capacity Deliverability Status or Interim Deliverability Status at all times during the Delivery Term, subject to Section 3.2(b) below. As between Buyer and Seller, 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) Throughout the Delivery Term and subject to Section 3.5, Seller shall use commercially reasonable efforts to maintain Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions 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.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.3 **Resource Adequacy Failure.**

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month occurring after the Commercial Operation Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [REDACTED]

[REDACTED]

*provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for purposes of CPUC Decision 21-06-035 in order for Buyer's purchase of the Product to comply with the requirements of CPUC Decision 21-06-035 and D.23-02-040, then the Replacement RA must also be provided by an incremental resource, including any sub-category attributes of D.21-06-035, to the extent required, if such sub-categories are contracted for under this Agreement.

[REDACTED]

### 3.4 **CPUC Mid-Term Reliability Requirements.**

(a) The Parties acknowledge that Buyer intends to apply this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision 21-06-035 and D.23-02-040. Seller represents and warrants to Buyer that:

(i) As of the Effective Date, the Facility is not on the baseline list of resources published by the CPUC on August 24, 2021, which, as of the Effective Date, is available at: [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035\\_baseline\\_gen\\_list.xlsx](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list.xlsx);

(ii) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility up to an amount not greater than the Storage Contract Capacity as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040;

(iii) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility in an amount equal to the Storage Contract Capacity as an incremental resource for purposes of CPUC Decision 21-06-035 and D.23-02-040 during the Delivery Term to any other person or entity; and

(iv) Seller will provide additional information and documentation to Buyer upon Buyer's reasonable request to enable Buyer to demonstrate that the Facility meets the procurement mandates set forth in CPUC Decision 21-06-035 and D.23-02-040, and Seller will cooperate with Buyer to identify, gather and provide the requested information to the CPUC.

(b) Buyer as of the Effective Date is required to demonstrate procurement progress to the CPUC through the Commercial Operation Date, and in connection with such obligation, Buyer is obligated to provide certain documentation to the CPUC for this Facility, including copies of the execution version of this Agreement, the execution version of the Interconnection Agreement, land leases, title deed or other documentation demonstrating Site Control, information regarding Facility development timelines, copies of notices to proceed with construction and similar evidence of Construction Start and Commercial Operation. Notwithstanding Article 18 (Confidentiality), except to the extent that the CPUC no longer requires submission of such documentation, Seller hereby authorizes Buyer to submit this and similar documentation to the CPUC as may be required by the CPUC in connection with satisfying Buyer's compliance obligations for the Facility under this Agreement; provided that Buyer shall use reasonable efforts to obtain from the CPUC confidential treatment for all information that qualifies as Confidential Information under this Agreement and is eligible for confidential or protective treatment under the CPUC's rules, orders, and decisions on confidential or protected information. Buyer's reasonable efforts shall include the following: designating such Confidential Information as "confidential" and "protected materials" (or similar designations) under the CPUC's orders and decisions governing the protection of confidential information submitted by load serving entities including as set forth in CPUC D.20-12-044 page 13; and either filing motion(s) to file under seal or submitting supporting declarations attesting to such designations when required by such orders and decisions.

### 3.5 **Compliance Expenditure Cap.**

(a) Notwithstanding anything to the contrary herein, if a change of law occurs after the Effective Date that (i) affects the Product's eligibility to qualify for or maintain Resource Adequacy Benefits, or (ii) would reasonably be expected to cause Seller to incur costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of the Capacity Attributes or Ancillary Services to be provided to Buyer hereunder that Seller would reasonably be expected to avoid incurring in the absence of such obligations, then Seller shall use commercially reasonable efforts to comply with such change of law as necessary to maintain the Product eligibility or comply with the obligations described above, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped [REDACTED] (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs 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 Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (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.

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the change in law, and (iii) with respect to Resource Adequacy Benefits, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the change in law. If Buyer does not respond to a Notice given by Seller under this Section 3.5 within sixty (60) days after Buyer’s receipt of same, Seller shall not be obligated to undertake such Compliance Actions for the remainder of the Contract Term; provided that Buyer may subsequently request, no more often than once per Contract Year, that Seller provide an updated Notice to Buyer of the anticipated Compliance Costs to undertake the previously waived Compliance Actions, and upon such request from Buyer, the Parties shall repeat the process set forth in this Section 3.5 with respect to such Compliance Actions.

## **ARTICLE 4**

### **OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term 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 the Product to the Delivery Point (excluding the cost of Charging Energy itself), including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Delivery Point to the Facility, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with (a) the delivery of Charging Energy to the Delivery Point (including the cost of Charging Energy itself) and (b) the acceptance and transmission of Discharging Energy at and after the Delivery Point, including without

limitation transmission costs and transmission line losses with respect to clauses (a) and (b) and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss.** Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer at the Delivery Point is free and clear of all liens, security interests, claims and encumbrances of any kind, except to the extent arising from any Charging Energy delivered to the Delivery Point by Buyer.

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

(a) **Forecast of Storage Capacity.** No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of the hourly expected Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F ("**Monthly Forecast**"). In addition, no less than sixty (60) days before the beginning of each Contract Year, commencing with the first full Contract Year following the Commercial Operation Date, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of the expected Storage Capacity for each month of the following Contract Year.

(b) **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 Operating Practice, Seller shall provide Buyer and Buyer's SC (if applicable) with a non-binding forecast of Storage Capacity 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 the Storage Capacity for each hour of each applicable day. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer's SC and Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(c) or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(c) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer and Buyer's SC (if applicable) of any changes from the Day-Ahead Forecast of one (1) MW or more in Storage Capacity, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Storage Capacity changes by at least one (1) MW as of a time that is less than one

(1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall contain information regarding the beginning date and time of the event resulting in the change in Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and the SC (if applicable); *provided* that Buyer or its SC specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(c), then Seller shall send such communications by telephone and email to Buyer and the SC (if applicable).

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC 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) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

#### 4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order; *provided* that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Reserved.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to



(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-

current methodology used to transmit such instructions as it may change from time to time. Subject to Section 3.5, (i) if at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible, and (ii) Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Curtailment Order during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

#### **4.5 Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all actions necessary to deliver the Charging Energy to the Facility from the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver Charging Energy from the Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all costs and charges of delivering the Charging Energy to the Delivery Point, including all CAISO costs and charges associated with Charging Energy.

(b) Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice, availability of the Facility, and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each valid Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer. Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated valid Charging Notice.

(c) Seller shall not charge the Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Product) associated with such discharge.

(d) Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by providing Discharging Notices to Seller electronically, provided, that Buyer's right to issue Discharging Notices is subject to Prudent Operating Practice, availability of the Facility, and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each valid

Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer, Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated valid Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders and Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order or Curtailment Order, subject to Prudent Operating Practice, availability of the Facility, and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

(f) The Product will include the full suite of Ancillary Services that the Facility is physically capable of providing subject to the Operating Restrictions and without modification of the Facility, and Seller will dispatch the Facility in response to signals from the Buyer or Buyer's Scheduling Coordinator, subject to Prudent Operating Practice, availability of the Facility, and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

#### 4.6 **Reduction in Delivery Obligation.**

(a) **Facility Maintenance.** Between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “**Planned Outage**”). To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof.

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

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

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

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

4.7 [Reserved].

4.8 Storage Availability.

(a)

(b)

4.9 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 Interconnection Capacity. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the then-effective Storage Contract 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 this Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible (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, or any third party use of, the Dedicated Interconnection Capacity.

4.11 Station Use. Seller shall be responsible for providing all energy to serve Station

Use (including paying the cost of any energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility. Notwithstanding the foregoing, the Parties acknowledge and agree that (a) energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice or as described in clause (c) below shall not be considered Station Use, (b) Station Use may be supplied over the same circuit as Charging Energy and Discharging Energy, and (c) during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice, the Facility may provide energy to serve thermal regulation load and transformer and inverter losses, including to the extent that such loads may otherwise be considered Station Use.

4.12 **Facility Operations and Maintenance.** Buyer shall at all times during the Delivery Term retain the right to issue dispatch instructions for the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain operational control of the Facility and all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **Pre-Commercial Operation Date Period.** Prior to Commercial Operation, (i) Buyer and Buyer's SC shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices except pursuant to Seller direction, (ii) Seller shall have exclusive rights to charge and discharge the Facility by providing such direction to Buyer or Buyer's SC, (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller's directions with respect to the bidding and scheduling of the Facility (including for Test Product), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility, including without limitation for the Test Product, shall be for Seller's account. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 4.13.

## **ARTICLE 5 TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any, or on or with respect to Charging Energy prior to its delivery to Seller. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the

event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, the Transmission Provider, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating 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 Electrical Losses and Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. 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 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**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of each month of the Delivery Term. Each invoice shall include (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), (b) the Contract Price applicable to such Product, and all adjustments to Seller's monthly payment made in accordance with the Agreement, including Section 3.3(b) and Exhibit C. Upon request of Buyer, Seller shall provide access to any records, including invoices or settlement data from the CAISO, reasonably necessary to verify the accuracy of any amount. The invoice shall be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices; *provided*, however, that the Parties acknowledge and agree that if the CAISO metering and transaction data showing the amount of Product delivered by the Facility for any Settlement Period during the prior month is not available or final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When (i) CAISO metering and transaction data showing the amount of Product delivered by the Facility for each Settlement

Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and (ii) the amount of Replacement RA delivered to Buyer (if any), become available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the invoice delivered by Seller for the following month.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice; *provided*, 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 prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or

adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** Unless otherwise mutually agreed, the Parties shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Within five (5) Business Days following any draw by Buyer on the Development Security in accordance with the terms of this Agreement, including for payment of Construction Delay Damages or COD Delay Damages, Seller shall replenish the amount drawn such that the Development Security is restored to the amount specified on the Cover Sheet; provided that, in accordance with Section 11.7, Seller's total replenishment obligation for the Development Security after the initial posting is limited to an amount equal to [REDACTED]. Upon the earlier of (i) Seller's delivery of the Performance Security (which may include Seller's election to apply all or a portion of the Development Security towards the Performance Security pursuant to Section 8.8), 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 and/or held and applied towards the Performance Security, and Seller's obligation to maintain the Development Security shall cease. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may elect to apply all or a portion of the Development Security posted in accordance with

Section 8.7 towards the Performance Security required to be posted pursuant to this Section 8.8. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Within five (5) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the amount specified on the Cover Sheet; provided, that Seller's obligation to replenish the Performance Security after the initial posting is limited to a total replenishment amount equal to [REDACTED] provided, further, that notwithstanding any provision herein to the contrary, such limitation on replenishment is not intended to and shall not be deemed to limit Seller's liability for a Termination Payment. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, 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 Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

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

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

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

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

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

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

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

## ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means), at the time indicated by the time stamp upon delivery without any bounce back or rejection, and if after 5 p.m. Pacific Prevailing Time, on the next Business Day; 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 occurring after the Effective Date 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 the impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2, except for impacts arising prior to the Effective Date); quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; detention of equipment comprising the Facility by the United States Customs and Border Patrol, unless such equipment was detained due to violation of Law; 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 the Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order or Curtailment Period, except to the extent such Curtailment Order or Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) 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. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the

foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or 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)(i) or Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 **Notice.** Within five (5) Business Days of becoming aware of the commencement of a delay or failure in performance due to a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of becoming aware of the commencement of a delay or failure in performance due to a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure of the claiming Party to provide written notice as required in the preceding sentence constitutes a waiver of a Force Majeure Event claim for all periods prior to the non-claiming Party's receipt of such written notice. The claiming Party shall 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. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

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. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11**

### **DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (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);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.3, (2) [REDACTED] the exclusive remedies for which are set forth in Section 4.8 and Exhibit C, and (3) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, and (4) failures related to the Storage Contract Capacity that do not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in Exhibit C), 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 Article 14; 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) The failure of Seller to achieve Construction Start [REDACTED]  
[REDACTED] after the Guaranteed Construction Start Date;

(ii) The failure of Seller to achieve Commercial Operation [REDACTED]  
[REDACTED] after the Guaranteed Commercial Operation Date;

(iii) if, in any two consecutive Contract Years, [REDACTED]  
[REDACTED]

(iv) if, Seller fails to maintain the Minimum Efficiency Rate [REDACTED]  
[REDACTED];

(v) if, Seller fails to maintain a Storage Contract Capacity (as determined pursuant to Exhibit O) equal to [REDACTED]

[REDACTED]

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

(vii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice thereof from Buyer, and expiration of the cure periods set forth therein, with respect to 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, as applicable;

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(i) Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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

11.3 **Termination Payment.** The termination payment ("**Termination Payment**") for the 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, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the 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 the 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, in the case of a Termination Payment, the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Subject to Seller's compliance with Section 11.8 and notwithstanding anything to the contrary herein, prior to the Commercial Operation Date, Seller's aggregate liability for any breaches of this Agreement by Seller or Events

of Default of Seller other than arising due to fraud, misrepresentation, or willful misconduct shall be limited to an amount equal to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY TAX CREDITS OR OTHER TAX BENEFITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3, 4.8, 11.2, 11.3 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE

ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

(e) Seller shall comply with all applicable 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 those related to non-discrimination, non-preference and conflict of interest.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“**CEQA**”) or other environmental law, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

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

13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of

indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that 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 limited within a venue permitted in law and under this Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller 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 **Prevailing Wage.** To the extent applicable to the Facility, 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. Seller shall enter into one or more project labor agreements for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed project labor agreements, or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

13.5 **Diversity Reporting.** As applicable to the Facility, Seller agrees to complete the Supplier Diversity and Labor Practices questionnaire available at <https://forms.gle/4VahoVD3h7pvE4dF6>, as may be updated from time to time, or a similar

questionnaire, at the reasonable request of Buyer and to comply with similar reasonable regular reporting requirements related to diversity and labor practices from time to time. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit T.

13.6 **Other Seller Commitments.** Seller shall perform the additional Seller commitments as set forth in Exhibit S.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld; *provided*, a Change of Control of Seller shall not require Buyer's consent and shall not be subject to Sections 14.2 or 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. The assigning Party shall pay the other Party's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any such financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld; *provided*, neither Buyer's consent nor execution of a Collateral Assignment Agreement shall be required for Seller to assign this Agreement pursuant to this Section 14.2. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender.

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

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and

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

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

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

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

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

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

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

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

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

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

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

(ii) Not assume this Agreement.

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **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. 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 authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve the dispute arising hereunder within thirty (30) days of initiating such discussions, the Parties shall submit the dispute to meditation prior to seeking any and all remedies available at Law or in equity.

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Mutual Indemnity.**

(a) Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an “**Indemnified Party**” and collectively, the “**Indemnified Group**”) from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Indemnifying Party or any of its subcontractors or anyone that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Indemnifying Party’s sale or use of the Product, deliverables or other items provided by the Indemnifying Party pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement by the Indemnifying Party (collectively, “**Indemnifiable Losses**”).

(b) The Indemnifying Party’s indemnity obligations apply to the maximum extent allowed by Law, subject to limitations on consequential and similar damages set forth in Article 12 herein, and includes defending the Indemnified Party. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations.

(c) Nothing in this Article 16 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

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

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

would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

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

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

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

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and bodily injury insurance, with a minimum amount of [REDACTED] per occurrence, and a general aggregate of not less than [REDACTED], and to provide contractual liability in said amount, covering Seller's insurable obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella/excess insurance policy in a minimum amount of liability of [REDACTED] each occurrence and in the aggregate. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest (separation of insureds clause) provisions. Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be [REDACTED] for bodily injury by accident-each accident. With regard to bodily injury by disease, the [REDACTED] disease policy limit and [REDACTED] disease-each employee will apply.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] each accident. 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 this Agreement.

(e) Builders All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility Builder's All-Risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, pollution liability insurance in the amount of [REDACTED] per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional insured.

(g) Subcontractor Insurance. Seller shall require its EPC contractor(s) to carry the same types of insurance as Seller. All EPC contractor(s) shall include Seller as an additional insured to (i) commercial general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property

damage. All EPC contractor(s) shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation of coverage, except ten (10) days for non-payment of premium. General Liability and Business Auto insurance shall be primary coverage without right of contribution from any insurance of Buyer. Umbrella/Excess insurance shall be non-contributory. 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.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

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 applicable Law or regulation, (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 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 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. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising

out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure under the California Public Records Act.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller and Seller's Affiliates' actual or potential accountants, advisors, agents, consultants, contractors, directors, employees, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those of this Article 18.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this Section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board of directors; documentation submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

## **ARTICLE 19 MISCELLANEOUS**

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented

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

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

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

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers

Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **No Recourse to Shareholders.** Seller and, if applicable, the Guarantor (to the extent set forth in the applicable Guaranty), shall solely be responsible for all debts, obligations and liabilities of Seller accruing and arising out of this Agreement. Except for a Guarantor (to the extent set forth in the applicable Guaranty) if Seller provides a Guaranty to Buyer, no owners (direct or indirect) or Affiliates of Seller, subcontractors of Seller, or any of the respective directors, officers, employees or agents of the foregoing, shall have any liability or responsibility for, relating to or in connection with Seller's failure to perform or faulty performance of any term, covenant, condition or provision of this Agreement or any other failure, breach (including breach of any duty or standard of conduct) or other act or omission of Seller arising out of or in connection with this Agreement. In pursuing any remedy for any such failure to perform, faulty performance or other failure, breach or other act or omission of Seller, Buyer shall have no rights and shall not make any claims, take any actions or assert any remedies against any Person other than Seller and, if applicable, Guarantor, nor against any assets other than the assets of Seller and, if applicable, Guarantor (solely to the extent set forth in the applicable Guaranty).

19.12 **Forward Contract.** The Parties intend that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.13 **Service Contract.** The Parties acknowledge and agree that this Agreement is intended to constitute a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended from time to time.

19.14 **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.

**CORMORANT ENERGY STORAGE,  
LLC, a Delaware limited liability company**

**MARIN CLEAN ENERGY, a California  
joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CORMORANT ENERGY STORAGE,  
LLC, a Delaware limited liability company**

**MARIN CLEAN ENERGY, a California  
joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

**Site Name:** Cormorant Battery Energy Storage Facility

**Site includes all or some of the following APNs:** 005-050-020

**County:** San Mateo County

**Type of Facility:** Battery Energy Storage

**Energy Management Software:** The Facility shall include 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 Buyer in accordance with the Agreement and/or the CAISO, including through ADS. Seller must provide remotely operable, 2-4 second timestamps, data historian (6 months of on-site storage and 24 months of cloud storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve

To the extent not already provided above, Seller must be able to provide telemetry and other data to Buyer and Buyer's SC in an electronic format compatible with bid optimization software used by Buyer and Buyer's SC for input into bid optimization software.

#### **Operating Characteristics of Facility:**

**Maximum Stored Energy Level at COD (MWh):** 752 MWh

**Minimum Stored Energy Level at COD (MWh):** 0 MWh

**Maximum Charging Capacity at COD:** 188 MW

**Maximum Discharging Capacity at COD:** 188 MW

**Operating Restrictions of Facility:** See Exhibit Q

**Storage Contract Capacity:** See definition in Section 1.1

**Maximum Output:** 752 MWh

**Delivery Point:** Facility PNode

**Facility Meter Locations:** See Exhibit R

**Metering Arrangement:** CAISO Metered Entity

**Facility Interconnection Point:** The Facility shall interconnect to the PG&E Martin 115 kV Substation

**Facility PNode:** the PNode assigned to the Facility by the CAISO, which shall be located at the PG&E Martin 115 kV Substation.

**Participating Transmission Owner:** Pacific Gas and Electric Company (“PG&E”)

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Facility Construction.

(a) “Construction Start” will occur once Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The “Guaranteed Construction Start Date” means the Expected Construction Start Date as such date may be extended by the Development Cure Period (defined below).

(c) If Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, [REDACTED]

[REDACTED] Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. 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 Construction Delay Damages set forth in such invoice. If Seller fails to pay the Construction Delay Damages within ten (10) Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such Construction Delay Damages from the Development Security. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”). The “Commercial Operation Date” shall be the later of (x) [REDACTED] or (y) the date on which Commercial Operation is achieved.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), 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 by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be promptly refunded to Seller. Seller

shall include a 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, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, [REDACTED]

[REDACTED], but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] after the Guaranteed Commercial Operation Date, 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 each, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis for each day of delay due to a Force Majeure Event, delays caused by Buyer, [REDACTED]

[REDACTED] (the "**Development Cure Period**"). The Development Cure Period, including for a Force Majeure Event, shall be no longer than [REDACTED] on a cumulative basis, except to the extent due to a Buyer delay. No extension shall be given under the Development Cure Period (a) if the delay was due to Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, (b) with respect to delays caused by a Force Majeure Event Seller does not satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3, or (c) Seller does not provide notice and documentation as required below. Seller shall provide written notice to Buyer of a delay other than a Force Majeure Event promptly, but in no case more than thirty (30) days after Seller became aware of such delay and its effects on the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, 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 ten (10) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable

satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to (i) install additional capacity or Network Upgrades, or take any other steps that are not inconsistent with Seller's obligations under this Agreement, such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and (ii) provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED]

[REDACTED]

**EXHIBIT C**  
**COMPENSATION**

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

(a) Storage Rate. All Product shall be paid on a monthly basis at the Storage Rate

[REDACTED]

(b) Availability Adjustment and Availability Adjustment Payment.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(c) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If for any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate but greater than the Minimum Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated

[REDACTED]

[REDACTED]

(d) Tax Credits. The Parties agree that the Storage Rate 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. 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 Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

(e) New Tax Benefits. Notwithstanding paragraph (d) of this Exhibit C, [REDACTED]

[REDACTED]

(f) Test Product. [REDACTED]

[REDACTED]

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Charging Energy and the Product 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 or upon termination of this Agreement. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement (including the Operating Restrictions) 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 (except as set forth in Section 4.13). Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller prior to the Commercial Operation Date in accordance with Section 4.13.

(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 (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 4.13 with respect to Test Product, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for Charging Energy, 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 Discharging Energy, CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all CAISO costs, charges or sanctions (i) incurred by Buyer because of Seller's failure to perform its obligations under this Agreement, (ii) incurred by Buyer because of any Facility outages for which notice has not been provided as required hereunder, or (iii) to the extent arising as a result of Seller's failure to comply with a valid Charging Notice or valid Discharging Notice that complies with the requirements of this

Agreement, if such failure results in incremental costs to Buyer (in each case, except to the extent such CAISO costs, charges or sanctions arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement). Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account, and any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account (except to the extent such Non-Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or energy storage facility operation, and any such sanctions or penalties are imposed upon the Facility or upon Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders, Charging Notices and Discharging Notices that complies with the requirements of this Agreement, or to otherwise perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility (in each case, except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement).

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such 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 in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's 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, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator unless such failure is caused by Seller's failure to perform its obligations under this Agreement.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30)

days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master 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. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones and all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
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 or month as applicable.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones. If Seller has missed any Milestones, a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance, including availability projections for the next twelve (12) months.
11. The utilization of union labor by Seller's principal EPC contractor.
12. 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.
13. Any other documentation reasonably requested by Buyer.

## EXHIBIT F

### FORM OF MONTHLY FORECAST

Storage Capacity, MW Per Hour – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

**EXHIBIT G**  
**[RESERVED]**

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Amended and Restated Energy Storage Service Agreement dated [Date] by and between Cormorant Energy Storage, LLC ("**Seller**") and Buyer ("**Agreement**"). 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, and interconnected and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than [REDACTED] of the Storage Contract Capacity.
3. Seller has commissioned all Facility equipment in accordance with its respective manufacturer's specifications.
4. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO, including through ADS.
5. The Facility is fully capable of charging, storing and discharging energy up to no less than [REDACTED] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff, as applicable.
8. Seller has caused the Facility to be included in the Full Network Model (as defined in the CAISO Tariff) and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

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

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

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Amended and Restated Energy Storage Service Agreement dated [Date] by and between Cormorant Energy Storage, LLC (“**Seller**”) and Buyer (“**Agreement**”). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of \_\_\_ MW<sub>AC</sub> to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Battery Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

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

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

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Cormorant Energy Storage, LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Amended and Restated Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). 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: \_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

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

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

## EXHIBIT K

### FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

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

Beneficiary:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attn: Chief Financial Officer

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 Amended and Restated Energy Storage Service Agreement dated as of \_\_\_\_\_ 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) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [*bank fax number*] confirmed by [email to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on such Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing delivered (a) via email to [Finance@mcecleanenergy.org](mailto:Finance@mcecleanenergy.org) and (b) followed up by certified letter, overnight courier, or delivered in person to: Attn: Chief Financial Officer, 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]

Exhibit A: Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[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 Amended and Restated Energy Storage Service 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 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 [Entity name, state of formation, type of entity] (“Guarantor”), and Marin Clean Energy (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and Cormorant Energy Storage, LLC (“Seller”), entered into that certain Amended and Restated Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “ESSA”) dated as of [\_\_\_\_], 20\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the ESSA, as required by Section 8.8 of the ESSA.
- 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 ESSA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

#### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

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

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. 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 ESSA, 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 ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

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

provided that, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the ESSA, 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 ESSA, 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 ESSA;

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

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

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with 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. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[ ]

Attn: [ ]

Fax: [ ]

If delivered to Guarantor, to it at

[ ]

Attn: [ ]

Fax: [ ]

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

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Cormorant Energy Storage, LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Amended and Restated Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.3(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

#### **Unit Information<sup>1</sup>**

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

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

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

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

Its:\_\_\_\_\_

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

## EXHIBIT N

### NOTICES

<b>Cormorant Energy Storage, LLC</b>	<b>Marin Clean Energy</b>
<b>All Notices:</b>  Street: 8800 N. Gainey Center Dr. Suite 100 City: Scottsdale, AZ 85258 Attn: General Counsel Phone: 480-653-8450 Email: contractnotices@arevonenergy.com and AREVON-CAM@arevonenergy.com	<b>All Notices:</b>  Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
<b>Reference Numbers:</b> Duns: N/A Federal Tax ID Number: [REDACTED]	<b>Reference Numbers:</b> Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
<b>Invoices:</b> Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	<b>Invoices:</b> Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
<b>Scheduling:</b> Attn: Asset Management Phone: 480-653-8452 Email: AREVON-CAM@arevonenergy.com	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
<b>Confirmations:</b> Attn: Asset Management Phone: 480-653-8452 Email: <u>AREVON-CAM@arevonenergy.com</u>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
<b>Payments:</b> Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	<b>Payments:</b> Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
<b>Wire Transfer:</b> [REDACTED]	<b>Wire Transfer:</b> [REDACTED]
<b>Credit and Collections:</b> Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	<b>Credit and Collections:</b> Attn: Chief Financial Officer Phone: (415) 464-6037 Email: finance@mcecleanenergy.org

<b>Cormorant Energy Storage, LLC</b>	<b>Marin Clean Energy</b>
<b>With additional Notices of an Event of Default to:</b> Attn: Justin Johnson, COO Phone: 480-653-8450 Email: contractnotices@arevonenergy.com	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

## EXHIBIT O

### STORAGE CAPACITY TESTS

#### **Storage Capacity Test Notice and Frequency**

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. No more than twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than ten (10) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon ten (10) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and timestamped data from the site historian verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

#### **Storage Capacity Test Procedures**

##### PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the provisions of this Exhibit O, and, to the extent not inconsistent with the foregoing, the operating protocols recommended, required or established by the manufacturer of the Facility. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost). For the avoidance of doubt, a Storage Capacity Test cannot be performed while the Facility is experiencing an outage.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Storage Contract Capacity;
- (2) Determine the amount of energy required to fully charge the Facility;
- (3) Determine the Facility charge ramp rate;
- (4) Determine the Facility discharge ramp rate;
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of charging energy at a sustained rate of the Maximum Charging Capacity exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility from the Minimum State of Charge up to the Maximum State of Charge at a Stored Energy Level not to exceed the Storage Contract Output on the Cover Sheet (MWh) ("Energy In");
- The measurement of discharging energy at a sustained rate of the Maximum Discharging Capacity exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point starting from the Maximum State of Charge until the Stored Energy Level reaches zero MWh as indicated by the Facility's energy management system ("Energy Out");
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- Amount of time between the Facility's electrical output going from zero percent (0%) to ninety-eight percent (98%) of Maximum Discharging Capacity; and
- Amount of time between the Facility's electrical input going from zero percent (0%) to ninety-eight percent (98%) of Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

- (1) time (minutes);
- (2) charging energy (MWh);

- (3) discharging energy (MWh);
  - (4) Stored Energy Level (MWh).
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
  - (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg); and
  - (3) Ambient air temperature (°F).
- E. Test Conditions.
  - (i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
  - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
  - (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
  - (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
  - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
  - (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp

rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Storage Contract Capacity. The total amount of Energy Out (as reported in Part II.B above) up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours, shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW<sub>AC</sub>, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.
- J. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above) and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

### Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

#### A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed

network protocol 3 data with the Buyer SCADA device, and transfer data to the site data historian for the calculation, recording and archiving of data points.

- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.
- Commissioning Checklist: Commissioning checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- The following Commercial Operation tests will be repeated annually:
  - PMAX Capacity Test
  - Round-Trip Efficiency and Energy Test

## **B. PMAX Capacity Test**

1. Purpose: This test will demonstrate the PMAX and will hold the Facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes ("Qualified Power Capacity").
2. Procedure:
  - (i) System starting state: The Facility will be in the on-line state with each battery subsystem at 100% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
  - (ii) Record the Facility active power level at the Facility Meter.
  - (iii) Command the Facility to follow a signal equal to the Facility's maximum operating level for five (5) minutes.
  - (iv) Record and store the Facility active power response. Measurements will be made at the point of interconnection (POI) and by the control system with a recording in the Facility historian.
  - (v) System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria
The Facility active power response and the commanded level shall be within $\pm 2\%$ as measured by the sum of values at the POI. The time to full output shall be 4 seconds or

less. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

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## C Round-Trip Efficiency and Energy Test

1. The following test demonstrates the updated Efficiency Rate and amount of energy required to fully discharge the Facility (Energy Out).
  - i. The Efficiency Rate is calculated by dividing the Energy Out (as reported in Part II.B above) by the Energy In (as reported in Part II.B above).
2. Procedure:
  - i. System Starting State: The Facility will be in the on-line state at the Minimum State of Charge.
  - ii. Record the initial value of the SOC.
  - iii. Command a real power charge that results in an AC power at the Facility's Maximum Charging Capacity and continue charging until the earlier of (a) the Facility has reached the Maximum State of Charge or (b) six (6) hours have elapsed since the Facility commenced charging.
  - iv. Record and store the SOC after the earlier of (a) the Facility has reached Maximum State of Charge or (b) six (6) hours of continuous charging.
  - v. Record and store the amount of charging energy, measured at the Facility Meter, to go from Minimum State of Charge to Maximum State of Charge. Such data point shall be used for purposes of calculating Energy In.
  - vi. Following a manufacturer recommended rest period, command a real power charge until the Facility has reached Maximum State of Charge. Then, command a real power discharge that results in an AC power output at the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has reached Minimum State of Charge, or (b) four (4) consecutive hours. The Parties acknowledge that the duration of the discharge

- at the Maximum Discharging Capacity may be less than four (4) hours due to degradation.
- vii. Record and store the SOC after four (4) hours of continuous discharge.
  - viii. Record and store the discharging energy as measured at the Facility Meter. Such data point shall be used for purposes of calculating Energy Out.
  - ix. If the Facility has not reached Minimum State of Charge, continue discharging the Facility until it reaches Minimum State of Charge.

Pass/Fail Criteria		
The measured Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate. The Energy Out at the Commercial Operation Date Storage Capacity Test is greater than or equal to the Storage Contract Output, but may be lower than the Storage Contract Output in subsequent Storage Capacity Tests		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

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[illegible]

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## EXHIBIT Q

### OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and communications protocols.

<b>Maximum Stored Energy Level:</b>	752 MWh at COD; Storage Contract Output thereafter
<b>Minimum Stored Energy Level:</b>	0 MWh
<b>Maximum Charging Capacity:</b>	188 MW
<b>Minimum Charging Capacity:</b>	1 MW
<b>Maximum Discharging Capacity:</b>	188 MW
<b>Minimum Discharging Capacity:</b>	1 MW
<b>Maximum State of Charge (SOC):</b>	100%
<b>Minimum State of Charge (SOC):</b>	0%
<b>Ramp Rate Range:</b>	Discharging: 0 MW/minute to 999 MW/minute Charging: 0 MW/minute to -999 MW/minute
<b>Annual Cycles:</b>	Equal to the Storage Contract Capacity for such Contract Year multiplied by the product of (i) four (4) hours and (ii) three hundred sixty-five (365)
<b>Daily Dispatch Limits:</b>	Equal to the Storage Contract Capacity for such day multiplied by four (4) hours
<b>Maximum Time at Minimum Stored Energy Level:</b>	No limit on Maximum Time at Minimum Stored Energy Level when grid power is available to the Facility
<b>Grid Charging of Facility:</b>	Yes

<b>Other Operating Limits:</b>	Seller is obligated to provide voltage support under the Interconnection Agreement.
<b>Temperature Derates:</b>	Maximum Charging Capacity and Maximum Discharging Capacity set forth above are based on operating temperature range of -30°C to 50°C (-22F to 122F). The Facility cannot operate outside of the operating temperature range.

**EXHIBIT R**  
**METERING DIAGRAM**

## **EXHIBIT S**

### **OTHER SELLER COMMITMENTS**

[REDACTED] to be paid to Buyer with sixty (60) days of the Commercial Operation Date and used for community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) or, subject to the further agreement of Buyer and Seller prior to such date, a community benefits package with a value of [REDACTED] (which may include apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc., or other similar program(s) providing community benefits) intended to make a tangible impact on the community.

## EXHIBIT T

### DIVERSITY REPORTING



#### MCE Supplier Diversity Survey

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 Senate Bill (SB) 255.

[amcgee@mcecleanenergy.org](mailto:amcgee@mcecleanenergy.org) [Switch account](#)



\* Required

Email \*

Your email

Business Name \*

Your answer

Where is your business located/headquartered?

Your answer



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, disabled-owned, and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the GO 156 Clearinghouse database at [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com)

- ☐ Yes
- ☐ No
- ☐ Qualified as a WMDVLGBTBE but not GO 156 Certified

If certified, when does your certification expire?

Date

mm/dd/yyyy 

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.

- ☐ Minority Owned
- ☐ Woman owned
- ☐ LGBT owned
- ☐ Disabled Veteran Owned
- ☐ Disabled Owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)



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.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: [https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE\\_SIC\\_Commodity\\_Codes.pdf](https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE_SIC_Commodity_Codes.pdf)

Your answer

If certified, please list a) your business's annual revenue as reported to the Supplier Clearinghouse and b) what was your revenue last year?

Your answer

If your business is qualified but not GO 156 certified, please explain why your business has not gone through the certification process, found here: <http://www.supplierdiversity.pro/apply.html>

Your answer



If your business used subcontractors for your MCE contract, please include a list of their business names, if their subcontract was for products or services, and their subcontract amount.

Example: Electrical Design Technology, Inc; products (batteries); \$100,000. If MCE is audited, we'll ask you for demonstration that subcontractor payments have occurred, such as a canceled check, bank statement, etc.

Your answer

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What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

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If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, disabled-owned, or disabled veteran-owned subcontractors.

Your answer

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Does your business have a history of using apprenticeship programs, 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 towns, cities, and unincorporated counties of Marin, Napa, Contra Costa, and Solano.

- ☐ Yes, apprenticeship programs in this recent contract with MCE
- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, apprenticeship programs but not in this 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
- ☐ Majority of workforce is California-based, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

If you answered yes, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with MCE.

Your answer \_\_\_\_\_



Does your business pay workers prevailing wage rates or the equivalent?

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to [www.dir.ca.gov/Public-Works/Prevailing-Wage.html](http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html)

- ☐ Yes, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

Is there anything else you'd like to add? If you'd like for us to promote your survey participation on our social media, please include your handles here.

Your answer

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 Senate Bill (SB) 255.

☐ Send me a copy of my responses.

Submit

Clear form



Never submit passwords through Google Forms.





March 6, 2024

TO: MCE Executive Committee

FROM: Garth Salisbury, Chief Financial Officer & Treasurer  
Maíra Strauss, Manager of Finance

RE: Proposed Fiscal Year 2024/25 Budget (Agenda Item #06)

ATTACHMENTS: A. Proposed FY 2024/25 Operating Fund Budget  
B. Proposed FY 2024/25 Program Development Fund Budget  
C. Proposed FY 2024/25 Resiliency VPP Fund Budget  
D. Proposed FY 2024/25 Energy Efficiency Program Fund Budget

Dear Executive Committee Members:

**Summary:**

MCE's fiscal year (FY) runs from April 1 through March 31 of the following calendar year. Before the end of every fiscal year, staff presents proposed budgets for the upcoming fiscal year to the Executive Committee and Board for consideration for MCE's Operating Fund, Energy Efficiency (EE) Program Fund, Program Development Fund (PDF) and the Resiliency Virtual Power Plant (VPP) Fund (the "Budgets"). Beginning in FY 2024/25, MCE also recommends creating and funding an Asset Acquisition Fund. These budgets authorize staff to:

1. Spend funds within the limits set forth in each budget line item and apply budgeted contingency amounts if necessary;
2. Fund MCE's Program Development Fund and support specific programs such as Electric Vehicle initiatives and other customer programs;
3. Fund MCE's Resiliency VPP Fund; and
4. Move closer to achieving MCE's reserve targets.

The attached Proposed Budgets reflect MCE's projected revenue, expenditures, and contingencies for FY 2024/25, and are anticipated to allow MCE to continue providing a minimum of 60% renewable energy and 95% greenhouse gas (GHG)-free energy for our customers. Staff does not anticipate requesting a rate adjustment in the upcoming fiscal year. Current rates are anticipated to result in sufficient revenue to cover the costs for energy and resource adequacy (RA), pay all

operating expenses, make an initial deposit to the new Asset Acquisition Fund, and make incremental progress on reaching MCE's Reserve Policy goals.

The proposed FY 2024/25 Operating Fund Budget is projected to result in an increase of \$65,000,000 to MCE's Net Position at the end of the fiscal year, assuming continuation of the current rates and no further significant increases in market prices. The Operating Fund also assumes a return to typical weather conditions in the MCE service area and incorporates higher costs for RA and renewable energy, reflective of the doubling and quadrupling increases observed, respectively. An addition to MCE's Net Position of \$65 million would result in achieving more than 93% of the MCE Reserve Policy and more than 100% of the Liquidity goals by the end of the fiscal year in 2025. At the conclusion of FY 202/25, staff may propose, and the Board may consider, deferring some of this projected revenue into the Operating Reserve Fund for use in future years. Any deferral into the Operating Reserve Fund would reduce the addition to Net Position by a like amount. Staff will update the Board on the progress and status of the budget throughout the fiscal year.

#### **FY 2024/25 Operating Fund Budget Highlights:**

Attachment A is the Proposed FY 2024/25 Operating Fund Budget.

**Revenue – Electricity Net (-\$12,000,000, 1.5% Decrease):** Electricity revenue is projected to decrease slightly from last FY's approved budget but increase by \$32,544,000 compared to the projected actuals. Sales volume (GWh) is also projected to be up by 4.5%. This is primarily due to the expectation that the weather in MCE's service area will revert to the historical norms, rather than the mild weather experienced in 2023. Net Energy Revenue is adjusted downward by an assumed delinquency rate of 1.5%, which represents approximately \$12 million in projected uncollectible balances.

**Cost of Energy (+\$23,000,000, 3.4% Increase):** Cost of energy is expected to increase slightly from the last FY's approved budget but increase \$123,000,000 compared to the projected actuals. While mild weather reduced MCE's cost of energy in FY 2023/24, we expect a return to typical weather patterns (and their associated costs) in the upcoming fiscal year. Over the last 12 months, renewable energy premiums have quadrupled and RA costs have doubled. Although MCE is mostly hedged for these costs, contingencies such as underproduction at certain renewable facilities, construction delays, and other factors often result in MCE having to purchase these products in the open market to meet demand. Expenses associated with the purchase of energy include our renewable energy power purchase agreements, charges by the California Independent Systems Operator (CAISO) for MCE load, services performed by the CAISO, RA costs and other regulatory energy requirements necessary to meet the energy needs of our customers.

**Personnel (+\$4,162,000, 21.7% increase):** This increase is reflective of cost-of-living adjustments to salaries, increases in benefits, promotions, a budgeted assumption of merit increases for staff in 2024 and 2025, fully integrating the full year's costs of new full-time employees (FTEs) added last year, and the anticipated addition of 7 new FTEs over the course of the fiscal year. This would increase FTE headcount from 96 to 103.

MCE is continuing its successful workforce development through a growing internship program that hires and trains up to 16 interns from MCE's service area per year. Additionally, MCE supports workforce development by providing opportunities for 2 fellows, 3 temporary employees, and 1 part-time employee. The program allows residents in MCE's service area, who may not have otherwise had the opportunity to work in the renewable energy industry, to get professional development and education in the industry.

In an increasingly competitive job market, particularly for technical roles, MCE has strategically enhanced its benefits package, earning the "Top Places to Work" award with special commendation for its benefits. This distinction, coupled with a turnover rate of 7.53% which is significantly below the industry average of 15.4%, attests to the success of our investments in employee benefits and recognition. To sustain this competitive edge and continue attracting top talent, we are proactively increasing our recruitment budget, acknowledging the higher costs associated with sourcing and securing specialized skills in today's market.

The proposed increase in the staffing budget is a carefully considered strategy to bolster MCE's operational capacity, strategic in-house expertise, employee satisfaction, and market competitiveness. Each element of the budget increase—from supporting a larger workforce to enhancing our events and benefits—is designed to build upon our strengths and address the challenges of a dynamic business environment. This investment in our people and culture is not just a response to immediate needs but a foundational component of our long-term strategic vision, ensuring MCE remains a leader in our field and an employer of choice for exceptional talent.

Overall, the proposed personnel costs represent 3% of the total Operating Fund Budget, which is slightly more than the current fiscal year (2.4% in FY 2023/24). Personnel costs are net of a \$4 million allocation of MCE staff time to California Public Utility Commission (CPUC) Funded Programs.

**Technical and Scheduling Consultants:** No Change. The current energy market price volatility in addition to unprecedented increases in energy and RA costs require staff to work with many technical consultants. These consultants allow us to develop new and more advanced strategies to better predict our daily and hourly customer load and to respond to new regulatory mandates. MCE is proactively educating staff and working with more specialized technical consultants to better manage these risks and to implement more sophisticated energy scheduling strategies.

**Legal and Policy Services (-\$67,000, 4.5% decrease):** Legal counsel expenses support MCE's contracting, human resources, financial and regulatory activities including market restructuring issues. Certain legal counsel expenses are expected to decrease slightly due to changing to more cost-effective firms. Additionally, CalCCA continues to take on several of the regulatory and policy issues on behalf of all CCAs in California thus reducing the expenses that were previously borne directly by MCE. These reductions in legal costs have been offset by additional costs to support/advise MCE's staff on employment law, storage technologies and financing matters such as MCE's bonding activities and electricity prepayment transactions.

**Communications Services (+\$71,000, 3% increase):** Communications costs are associated with print, online, social, and video advertising; printing and mailing customer notices including compliance notices, targeted program marketing and on-going engagement; community outreach and sponsorships; and special events. MCE is also investing in customer engagement campaigns, increasing diverse customer outreach, and promoting our clean energy services and programs. Costs are expected to increase in anticipation of MCE's domain change to .gov, required by current legislation, additional vendor support for marketing growing customer programs, maintaining and growing our customer base, as well launching a community education campaign for the expected enrollment of the City of Hercules in early 2025.

**Other services (+\$744,000, 30.8% increase):** Other services encompass certain expenses not captured in other budget categories, such as consulting related to new projects and initiatives and investment in MCE's infrastructure, including the ongoing support of Customer Relationship Management (CRM) software, and the Digital Analytics Platform (DAP) developed by the Technology and Analytics Department.

**General and Administration (+\$1,324,000, 46.4% increase):** General and administration costs include office supplies, data, travel, dues and subscriptions, support for California Community Choice Association (CalCCA), and other related expenses. Increased costs are associated with increased regulatory and legislative activities, CRM, and other platforms licenses for use by our Finance, Public Affairs, Customer Programs and Legal and Policy Departments. Two load forecasting software tools for use by the Power Resources Department to allow for more sophisticated resource allocation and optimization of load scheduling is also captured in this budget line.

**Occupancy (+92,000, 10% increase):** Increased costs are expected due to annual increases in our planned rent schedules.

**Contingency (no change):** As the operating cost components of the Finance Department are allocated in all the other budget line items, only the Contingency is represented here. This line represents \$1.5 million or 0.2% of the total Operating Fund Budget. Staff proposes once again that it be managed/allocated by the Finance Department based upon actual outcomes and needs within the group budgets throughout the fiscal year.

#### **Non-Operating Revenue and Expense, Fund Transfer and Other Updates:**

**Grant income (-\$317,000, 5.9% decrease):** MCE receives grants from government and non-profit organizations to support certain activities connected to MCE's mission. Grant income varies year to year as grants can be "one time" or can be provided to MCE under multiple year agreements. Some grants expired in the current fiscal year and others are starting in FY 2024/25. The following grants or portions thereof are included:

1. \$1,000,000 (2022-2027) to support MCE's Healthy Homes program in Richmond. Funded by the California Strategic Growth Council Transformative Climate Communities program.

2. \$750,000 (2024-2025) to support MCE's Healthy Homes program across our service area. Funded by congressionally directed community spending requests (federal earmarks).
3. \$750,000 (2020-2025) to support solar combined with storage installations for nonprofits in Marin. Funded by the Marin Community Foundation.
4. \$500,000 (2024-2025) to support solar combined with storage installations for community resiliency centers. Funded by federal earmarks.
5. \$1,500,000 (2022-2024) to support EV charging installations in Contra Costa disadvantaged communities in partnership with the Contra Costa Transportation Authority. Funded by the California Energy Commission.
6. \$180,000 (2022-2024) to support EV charging installations at multifamily properties in Marin. Funded by the Marin Community Foundation.
7. \$86,000 (2024-2024) to support EV charging installations at multifamily properties. Funded by the California Energy Commission Reliable, Equitable, and Accessible Charging for multi-family Housing (REACH) program.
8. \$2,000,000 (2024-2025) to support EV charging installations. Funded by congressionally directed community spending requests (federal earmarks).
9. \$972,924 to support a participatory budgeting process in priority communities to guide the grant investment into charging stations and shared mobility options. Funded by the Department of Energy.
10. \$1,762,000 for Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs (DAC-GT). The program provides income-qualified, residential customers in disadvantaged communities with 100% renewable energy and receive a 20% bill discount.

**Interest Income (+\$7,000,000, 140% increase):** Continued strong interest income is expected to result from a combination of  $\frac{1}{3}$  liquid money market funds,  $\frac{1}{3}$  short term CDARS and CDS invested out to a maximum of two years and  $\frac{1}{3}$  a targeted diversified investment strategy developed by an outside investment management company for investments out to five years. This investment strategy is designed to capture the highest interest rates we have experienced over the past 15 years while maintaining a strict adherence to the Board approved Investment Policy.

#### **Creation of an Asset Acquisition Fund (AAF)**

Over the past several years, MCE has made several significant strides in preparation for owning renewable energy generating assets, including possibly paying for new transmission additions to significantly reduce or eliminate curtailments at some of our resources, and owning a building for our office space. These steps have included securing strong investment grade ratings from the major

credit rating agencies, establishing, and funding an Operating Reserve Fund through revenue deferrals, creating a Board approved form of Bond Indenture and Debt Policy to allow us to quickly access the US debt capital markets, and finally, making significant progress on meeting our Reserve Policy Goals. If approved, this new proposed fund will help reduce MCE's exposure to highly volatile market risks and costs, and bring more certainty to our costs in setting rates.

The next step on the path to actual project/asset ownership would be to set aside funding for project feasibility consultants, land use professionals, engineers, and other consultants to assist in the evaluation process of identifying and purchasing assets. Additionally, it is staff's intent to finance project ownership with a mix of equity (a "down payment") and tax-exempt or taxable debt in addition to any new investment tax incentives that we might be able to secure under federal law. The creation and funding of the Asset Acquisition Fund would facilitate these next important steps.

It should be noted that creating the AAF is the first step. Subsequently, staff would present proposals to the Board, as required, in April or May, to transfer funds into this account from FY 2023/24 excess revenues. Staff would also seek the Board's review and approval for expenses in the AAF in alignment with MCE policies on procurement and expenditures.

#### **FY 2024/25 Program Development Fund (PDF)**

The Program Development Fund (Attachment B) is financed by a transfer from the Operating Fund equal to 50% of the 1¢/kWh premium for Deep Green service (\$1,940,000) and additional amounts approved by the Board. For the FY 2024/25 budget year, staff is requesting a transfer from the Operating Fund of an additional \$6,460,000 for a total of \$8,400,000. Finally, there is additional funding of \$180,000 from the Marin Community Foundation for a total funding amount of \$8,580,000. This fund will be used for incentives, technical assistance, community education, and implementation of the following programs:

- Transportation electrification:
  - Rebates for newly purchased and leased EVs for income-qualified residents.
  - Rebates for charging ports installed at workplaces and multifamily properties.
  - MCE's EV smart charging app, MCE Sync, which automates home EV charging to use the least expensive and cleanest energy on the grid.
- Building electrification:
  - Rebates for electric, grid-enabled Heat Pump Water Heaters.
  - An Emergency Replacement Water Heater Loaner program to facilitate electrification at the point of existing water heater failure.
- Community Housing Fund:
  - Funds building remediation and repair work for homeless shelters and other community housing resources that would otherwise be a barrier to accessing energy efficiency programs.

**Committed and Expended Funding:** The Program Development Fund finances programs that require long lead times from project application, approval, permitting, construction, and final completion. In some cases, this process can take many years. Consequently, MCE commits funding

for projects on an annual basis, but actual expenditures of these funds are often delayed for a few years or, occasionally, projects can be canceled entirely. If actual expenditures in a given fiscal year are expected to exceed available funding, staff will come back to the Board to request additional appropriations from the General Fund.

### **FY 2024/25 Resiliency VPP Fund**

On November 21, 2019, your Board approved the creation of a Resiliency VPP Fund in response to power outages which significantly impact the safety, reliability, health, and welfare of our customers, and disproportionately affect vulnerable populations. MCE is working to help strengthen our communities by piloting energy storage paired with solar to retain essential power supply during outages while minimizing the use of carbon-emitting generators and fossil-fuel technologies. Since the creation of the fund, your Board has approved \$9 million of funding in addition to directing \$500,000 of Federally Earmarked funds and \$750,000 of funding from the Marin Community Foundation for a total of \$10,250,000 toward battery storage programs in our communities. So far, over 1.6 MWhs of storage facilities have been installed at 76 homes and seven critical facilities in MCE's service area.

Staff is recommending utilizing \$878,000 of additional funding from Federal Earmark funds and Marin Community Foundation grants this year but no transfers from the Operating Account as sufficient funding is available from previous years to satisfy anticipated expenditure in Fiscal Year 2024/25.

### **Energy Efficiency Program Fund**

The Energy Efficiency Program Fund (Attachment D) uses funding authorized by the CPUC to support the following programs: Efficiency Market Programs (Residential, Commercial and Peak Flex Market), Strategic Energy Management for Commercial, Industrial and Multifamily Properties, Agricultural and Industrial Resources (AIR) Program, Commercial Equity Program, Multifamily Energy Savings, Home Energy Savings, and Green Workforce Pathways. The funds awarded from the CPUC have increased from \$28,757,000 in FY 2023/24 to \$32,869,000 in FY 2024/25.

### **Fiscal Impacts:**

The net impact of the Proposed Operating Fund Budget is a projected \$65,000,000 contribution to MCE's net position during FY 2024/25. The projections assume no change to MCE's current rates, a return to normalized weather patterns and customer demand, and are based on the best available information regarding market prices for any unhedged power supply.

Finances in the upcoming fiscal year are subject to a variety of anticipated and unforeseen factors that could have a measurable impact on MCE's portfolio. These include:

- 1) Market volatility – System energy, renewable energy and resource adequacy prices may end up being even higher than anticipated due to market volatility, scarcity,

availability, or regulatory changes that can diminish the value of existing contracts or drive-up costs.

- 2) Customer Energy Demand – As we continue to experience climate change through extreme weather events, including summer heat waves, severe cold temperatures, and drought, energy demand can outpace our hedged energy supply and negatively impact MCE’s finances. This is particularly true when day-ahead and/or real-time market prices are abnormally high.

**Projected Impacts on MCE’s Reserve Policy Goals:**

Given the projected results from the current fiscal year, Staff will seek Board approval in April or May to consider a \$50 million deposit into the Asset Acquisition Fund and a \$30 million deferral into the Operating Reserve Fund. The following table represents the projected headway on meeting MCE’s Reserve and Liquidity targets if these deposits and deferrals are approved and net revenues are as projected in FY 2024/25. MCE would make significant progress on meeting the Board approved Reserve Policy goals and achieve the Liquidity targets:

MCE Reserve & Liquidity Requirement Targets		FY 2023/24	FY 2024/25
Reserve Projections	Reserve Target (\$)	423,396,000	445,018,000
	<b>Projected Actual Reserves after Transfers* (\$)</b>	<b>347,564,000</b>	<b>412,274,000</b>
	Reserves Actual (% of Target)	82%	93%
Liquidity Projections	Liquidity Target (\$)	463,996,000	487,691,000
	<b>Total Projected Liquidity** (\$)</b>	<b>465,594,000</b>	<b>523,874,000</b>
	Projected Days Liquidity on Hand	241	258
	Target Days Liquidity on Hand	240	240

\*After proposed transfers of \$30 million into the Operating Reserve Fund and \$50 million into the Asset Acquisition Fund.

\*\*Includes a \$60 million credit facility and \$60 million of deferred revenue.

**Recommendation:** Recommend approval of the proposed Fiscal Year 2024/25 budgets and the creation of the Asset Acquisition Fund to the full Board.

## A. Proposed FY 2024/25 Operating Fund Budget

**MCE Operating Fund**  
**Proposed Budget Fiscal Year 2024/25**  
**From April 1, 2024 through March 31, 2025**

	Fiscal Year 2023/24 Approved Budget	Fiscal Year 2023/24 Projected Budget	Fiscal Year 2024/25 Proposed Budget	Approved vs Proposed \$ Variance (Under) Over	Approved vs Proposed % Variance (Under) Over	As % of Net Electricity Revenue FY 2024/25	As % of Net Electricity Revenue FY 2023/24
<b>ENERGY REVENUE</b>							
Operating Revenues	\$ 816,760,000	\$ 770,825,000	\$ 799,829,000	\$ (16,931,000)	-2.1%		
Uncollectible Accounts	(16,621,000)	(15,507,000)	(11,967,000)	(4,654,000)	-28.0%		
<b>REVENUE - ELECTRICITY NET</b>	<b>800,139,000</b>	<b>755,318,000</b>	<b>787,862,000</b>	<b>(12,277,000)</b>	<b>-1.5%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>ENERGY EXPENSES</b>							
Cost of Energy	665,973,000	565,545,000	688,761,000	22,788,000	3.4%	87.4%	83.2%
<b>NET ENERGY REVENUE</b>	<b>134,166,000</b>	<b>189,773,000</b>	<b>99,101,000</b>	<b>(35,065,000)</b>	<b>-26.1%</b>	<b>12.6%</b>	<b>16.8%</b>
<b>OPERATING EXPENSES</b>							
Personnel	19,169,000	19,972,000	23,331,000	4,162,000	21.7%	3.0%	2.4%
Data Manager	5,134,000	5,232,000	5,136,000	2,000	0.0%	0.7%	0.6%
Technical and Scheduling Consultants	1,275,000	1,008,000	1,275,000	-	0.0%	0.2%	0.2%
Service Fees - PG&E	2,527,000	2,496,000	2,560,000	33,000	1.3%	0.3%	0.3%
Legal and Policy Services	1,487,000	816,000	1,420,000	(67,000)	-4.5%	0.2%	0.2%
Communication Services	2,405,000	1,872,000	2,476,000	71,000	3.0%	0.3%	0.3%
Other Professional Services	2,419,000	2,184,000	3,163,000	744,000	30.8%	0.4%	0.3%
General and Administrative	2,855,000	2,676,000	4,179,000	1,324,000	46.4%	0.5%	0.4%
Occupancy	916,000	816,000	1,008,000	92,000	10.0%	0.1%	0.1%
Contingency	1,500,000	-	1,500,000	-	0.0%	0.2%	0.2%
<b>TOTAL OPERATING EXPENSES</b>	<b>39,687,000</b>	<b>37,072,000</b>	<b>46,048,000</b>	<b>6,361,000</b>	<b>16.0%</b>	<b>5.8%</b>	<b>5.0%</b>
<b>OPERATING INCOME</b>	<b>94,479,000</b>	<b>152,701,000</b>	<b>53,053,000</b>	<b>(41,426,000)</b>	<b>-43.8%</b>	<b>6.7%</b>	<b>11.8%</b>
<b>NONOPERATING REVENUES</b>							
Grant Income	5,385,000	1,056,000	5,068,000	(317,000)	-5.9%	0.6%	0.7%
Other Income	-	16,938,000	-	-	-	-	-
Interest Income	5,000,000	13,956,000	12,000,000	7,000,000	140.0%	1.5%	0.6%
<b>TOTAL NONOPERATING REVENUES</b>	<b>10,385,000</b>	<b>31,950,000</b>	<b>17,068,000</b>	<b>6,683,000</b>	<b>64.4%</b>	<b>2.2%</b>	<b>1.3%</b>
<b>NONOPERATING EXPENSES</b>							
Banking Fees and Financing Costs	222,000	204,000	225,000	3,000	1.4%	0.0%	0.0%
Grant Expenses	5,385,000	1,056,000	5,068,000	(317,000)	-5.9%	0.6%	0.7%
<b>TOTAL NONOPERATING EXPENSES</b>	<b>5,607,000</b>	<b>1,260,000</b>	<b>5,293,000</b>	<b>(314,000)</b>	<b>-5.6%</b>	<b>0.7%</b>	<b>0.7%</b>
<b>CHANGE IN NET POSITION</b>	<b>99,257,000</b>	<b>183,391,000</b>	<b>64,828,000</b>	<b>(34,429,000)</b>	<b>-34.7%</b>	<b>8.2%</b>	<b>12.4%</b>
Budgeted Net Position Beginning of Period	241,249,000	241,249,000	424,640,000	183,391,000	76.0%	-	-
Change in Net Position	99,257,000	183,391,000	64,828,000	(34,429,000)	-34.7%	8.2%	12.4%
<b>BUDGETED NET POSITION END OF PERIOD</b>	<b>340,506,000</b>	<b>424,640,000</b>	<b>489,468,000</b>	<b>148,962,000</b>	<b>43.7%</b>	<b>-</b>	<b>-</b>
<b>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>							
Capital Outlay	389,000	-	-	(389,000)	-100.0%	-	0.0%
Transfer to Resiliency VPP Fund	-	-	-	-	-	-	-
Transfer to Program Development Fund	1,970,000	1,970,000	8,400,000	6,430,000	326.4%	1.1%	0.2%
Proposed Transfer to Operating Reserve Fund	-	30,000,000	-	-	-	-	-
Proposed Transfer to Asset Acquisition Fund	-	50,000,000	-	-	-	-	-
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>	<b>2,359,000</b>	<b>81,970,000</b>	<b>8,400,000</b>	<b>6,041,000</b>	<b>256.1%</b>	<b>1.1%</b>	<b>0.3%</b>
<b>BUDGETED NET INCREASE IN OPERATING FUND BALANCE</b>	<b>96,898,000</b>	<b>101,421,000</b>	<b>56,428,000</b>	<b>(40,470,000)</b>	<b>-41.8%</b>	<b>7.2%</b>	<b>12.1%</b>

For comparison purposes, the Proposed FY 2024/25 budget is shown along the current year's Approved Budget. Actuals through December 2023 plus projections through March 31, 2024 are shown in the Fiscal Year 2023/24 Projected Budget column.

B. Proposed FY 2024/25 Program Development Fund Budget

**MCE**  
**Program Development Fund**  
**Proposed Budget Fiscal Year 2024/25**  
**From April 1, 2024 through March 31, 2025**

	FY 2023/24 Approved Budget	FY 2023/24 Projected Budget	FY 2024/25 Proposed Budget
<b>REVENUE AND OTHER SOURCES</b>			
Transfer from Operating Fund and Deep Green Premium	\$ 1,970,000	\$ 1,970,000	\$ 8,400,000
Marin Community Foundation Grant	-	-	180,000
<b>TOTAL REVENUE AND OTHER SOURCES</b>	<b>1,970,000</b>	<b>1,970,000</b>	<b>8,580,000</b>
<b>EXPENDITURES AND COMMITTED FUNDS</b>			
Transportation Electrification Programs	4,850,000	3,505,000	6,461,000
Committed Funds	-	-	2,320,000
Heat Pump Water Heater Incentives	360,000	250,000	500,000
Emergency Water Heater Loaner Fund	-	-	145,000
Marin Community Foundation Grant Efforts	-	-	180,000
Community Housing Fund	100,000	37,000	100,000
Electrification Technical Assistance	100,000	2,000	9,000
<b>TOTAL EXPENDITURES AND OTHER USES</b>	<b>5,210,000</b>	<b>3,794,000</b>	<b>9,715,000</b>
Net Increase (Decrease) in Fund Balance	(3,240,000)	(1,824,000)	(1,135,000)
Fund Balance at Beginning of Period*	3,288,000	2,959,000	1,135,000
Fund Balance at End of Period	<b>48,000</b>	<b>1,135,000</b>	<b>-</b>

\*Beginning balance for FY 2025/24 budget differs from budget FY 2023/24 ending actual balance due to delays in actual fund spending.

For comparison purposes, the Proposed FY 2024/25 budget is shown along the current year's Approved Budget. Actuals through December 2023 plus projections through March 31, 2024 are shown in the Fiscal Year 2023/24 Projected Budget column.

C. Proposed FY 2024/25 Resiliency VPP Fund Budget

MCE  
Resiliency VPP Fund  
Proposed Budget Fiscal Year 2024/25  
From April 1, 2024 through March 31, 2025

	FY 2023/24 Approved Budget	FY 2023/24 Projected Budget	FY 2024/25 Proposed Budget
<b>REVENUE AND OTHER SOURCES</b>			
Federal Earmark Funding	\$ 500,000	\$ 372,000	\$ 500,000
Marin Community Foundation Grant	750,000	-	378,000
Transfer from Operating Fund	-	-	-
<b>Total Revenue and Other Sources</b>	<b>1,250,000</b>	<b>372,000</b>	<b>878,000</b>
<b>EXPENDITURES AND OTHER USES</b>			
VPP Solar Storage	2,000,000	558,000	2,747,000
PeakFLEX	-	-	500,000
Federal Earmark Funding Supported Resiliency Efforts	-	-	500,000
Efforts Related to Marin Community Foundation Grant	750,000	372,000	378,000
Federal Earmark Match Funding	-	-	250,000
Home Area Network Device Pilot	-	-	150,000
VPP Efforts	500,000	-	74,000
<b>TOTAL EXPENDITURES AND OTHER USES</b>	<b>3,250,000</b>	<b>930,000</b>	<b>4,599,000</b>
Net Increase (Decrease) in Fund Balance	(2,000,000)	(558,000)	(3,721,000)
Fund Balance at Beginning of Period*	4,232,000	4,919,000	4,361,000
Fund Balance at End of Period	<b>2,232,000</b>	<b>4,361,000</b>	<b>640,000</b>

\*Beginning balance for FY 2025/24 budget differs from budget FY 2023/24 ending actual balance due to delays in actual fund spending.

For comparison purposes, the Proposed FY 2024/25 budget is shown along the current year's Approved Budget. Actuals through December 2023 plus projections through March 31, 2024 are shown in the Fiscal Year 2023/24 Projected Budget column.

D. Proposed FY 2024/25 Energy Efficiency Program Fund Budget

MCE  
Energy Efficiency Fund  
Proposed Budget Fiscal Year 2024/25  
From April 1, 2024 through March 31, 2025

	FY 2023/24 Approved Budget	FY 2023/24 Projected Budget	FY 2024/25 Proposed Budget
<b>REVENUE AND OTHER SOURCES</b>			
Public Purpose Energy Efficiency Program	\$ 14,982,000	\$ 8,295,000	\$ 30,084,000
Public Purpose Low Income Families and Tenants Pilot Program	1,625,000	1,104,000	2,785,000
Peak FLEXmarket	8,250,000	54,000	-
ResMap	3,900,000	129,000	-
<b>TOTAL REVENUE AND OTHER SOURCES</b>	<b>28,757,000</b>	<b>9,582,000</b>	<b>32,869,000</b>
<b>EXPENDITURE AND OTHER USES</b>			
Public Purpose Energy Efficiency Program	14,982,000	\$ 8,295,000	\$ 30,084,000
Public Purpose Low Income Families and Tenants Pilot Program	1,625,000	1,104,000	2,785,000
Peak FLEXmarket	8,250,000	54,000	-
ResMap	3,900,000	129,000	-
<b>TOTAL EXPENDITURES AND OTHER USES</b>	<b>28,757,000</b>	<b>9,582,000</b>	<b>32,869,000</b>
<b>BALANCE</b>	-	-	-

For comparison purposes, the Proposed FY 2024/25 budget is shown along the current year's Approved Budget. Actuals through December 2023 plus projections through March 31, 2024 are shown in the Fiscal Year 2023/24 Projected Budget column.



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | FAIRFIELD | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY  
PINOLE | PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

**DRAFT**

**Board of Directors Meeting  
Thursday, March 21, 2024  
6:30 P.M.**

*Public comments may be made in person or remotely via the details below.*

1125 Tamalpais Avenue, San Rafael, CA 94901 (MCE)  
2300 Clayton Road, Suite 1150, Concord, CA 94920 (MCE)  
11780 San Pablo Ave., Ste D, El Cerrito, CA 94530 (Contra Costa County)

**Remote Meeting Participation for Members of the Public**

Video Conference: <https://zoomto.me/F6Ogt>

Phone: Dial (669) 900-9128, Meeting ID: 890 0487 7785, Passcode: 525690

**Agenda Page 1 of 2**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 2.15.24 Meeting Minutes
  - C.2 Approved Contracts for Energy Update
  - C.3 Proposed First Amendment to Second Agreement with Energy Solutions
6. Proposed Fiscal Year 2024-25 Budget (Discussion/Action)
7. Board Matters & Staff Matters (Discussion)
8. Adjourn

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

## Agenda Page 2 of 2

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3674 or [ada-coordinator@mcecleanenergy.org](mailto:ada-coordinator@mcecleanenergy.org) at least 72 hours before the meeting start time to ensure arrangements are made.