MCE Empowering Our Clean Energy Future

CONTRA COSTA | MARIN | NAPA | SOLANO

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

Supplemental Agenda

Executive Committee Meeting
Wednesday, December 6, 2023
12:00 P.M.

MCE Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
MCE Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920

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

For Viewing Access Join Zoom Meeting:
https://us02web.zoom.us/j/83485920504?pwd=ak5XMmpkc0N4bmN3aGllaTkyNnNLUT09

Dial: 1-669-900-9128
Webinar ID: 834 8592 0504
Passcode: 368129

Agenda Page 1 of 2

1. Roll Call/Quorum

2. Public Open Time (Discussion)

CLOSED SESSION
Conference with Labor Negotiator
Agency Designated Representative: Executive Committee Chair
Unrepresented Employee: Chief Executive Officer
Public Employee Performance Evaluation: Chief Executive Officer

3. Roll Call/Quorum

4. Board Announcements (Discussion)

5. Public Open Time (Discussion)

6. Report from Chief Executive Officer (Discussion)

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

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

9. 2023 Charles F. McGlashan Advocacy Award Nominations (Discussion/Action)

10. Revised MCE Implementation Plan to Include the City of Hercules (Discussion/Action)

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

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

13. Committee Matters & Staff Matters (Discussion)

14. 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 which requires an accommodation or an alternative format, please call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.

DRAFT

MCE EXECUTIVE COMMITTEE MEETING MINUTES
Wednesday, November 1, 2023
12:00 P.M.

Present:	Eli Beckman, Town of Corte Madera Edi Birsan, City of Concord Cindy Darling, City of Walnut Creek Eduardo Martinez, City of Richmond Devin Murphy, City of Pinole Gabriel Quinto, City of El Cerrito Shanelle Scales-Preston, City of Pittsburg Sally Wilkinson, City of Belvedere
Absent:	David Fong, Town of Danville Max Perrey, City of Mill Valley Holli Thier, Town of Tiburon
Staff & Others:	Jesica Brooks, Board Clerk Darlene Jackson, Lead Board Clerk Vicken Kasarjian, Chief Operating Officer Shaheen Khan, VP of Human Resources, Diversity & Inclusion Tanya Lomas, Internal Operations Assistant Catalina Murphy, General Counsel Ashley Muth, Internal Operations Assistant Daniel Settlemyer, Internal Operations Coordinator Jamie Tuckey, Chief of Staff Alden Walden, Consultant, PEA Dawn Weisz, Chief Executive Officer

1. Roll Call/Quorum
   Acting Chair Quinto called the regular Executive Committee meeting to order at 12:11 p.m. with quorum established by roll call.

2. Public Open Time (Discussion)
   Acting Chair Quinto opened the public comment period and there no comments.

CLOSED SESSION
Conference with Labor Negotiator
Agency Designated Representative: Executive Committee Chair
Unrepresented Employee: Chief Executive Officer
Public Employee Performance Evaluation: Chief Executive Officer

The Committee adjourned to Closed Session at 12:14 p.m.

The Committee reconvened in open session at 1:23 p.m. Acting Chair Quinto reported out from the closed session that direction was given to staff.

3. Roll Call/Quorum
   Quorum was established by roll call.

4. Board Announcements (Discussion)
   There were no comments.

5. Public Open Time (Discussion)
   Acting Chair Quinto opened the public comment period and there no comments.

6. Report from Chief Executive Officer (Discussion)
   CEO, Dawn Weisz, introduced this item and addressed questions from Committee members.

7. Consent Calendar (Discussion/Action)
   C.1 Approval of 10.4.23 Meeting Minutes

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

Action: It was M/S/C (Murphy/Birsan) to approve Consent Calendar item C.1. Motion carried by unanimous roll call vote. (Absent: Directors Fong, Perrey, Scales-Preston, and Thier).

8. Resolution No. 2023-12 Establishing the Annual Compensation for the Chief Executive Officer (Discussion/Action)
   The item was not voted on and will be considered at a future meeting.

9. City of Hercules Membership Request and Analysis (Discussion/Action)
   Jenna Tenney, Manager of Communications and Community Engagement and Alden Walden, Consultant with PEA, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Darling/Murphy) to **recommend that the Board of Directors:**

- **Approve Resolution 2023-13 Approving the City of Hercules as a Member,**
- **Approve Amendment 16 to the MCE JPA Agreement, and**
- **Direct staff to submit Addendum No. 9 to the MCE Implementation Plan and Statement of Intent to the CPUC.**

Motion carried by unanimous roll call vote. (Absent: Directors Fong, Perrey, Scales-Preston, and Thier).

10. Draft 11.16.23 Board Agenda (Discussion)

    Dawn Weisz, CEO, presented this item and addressed questions from Committee members.

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

Action: No action required.

11. Committee Matters & Staff Matters (Discussion)

    Comments were made by Directors Birsan, Wilkinson, and Murphy.

12. Adjournment

    Acting Chair Quinto adjourned the meeting at 2:12 p.m. to the next scheduled Executive Committee Meeting on December 1, 2023.

_____

Gabriel Quinto, Acting Chair

Attest:

_____

Dawn Weisz, Secretary

December 6, 2023

TO: MCE Executive Committee

FROM: Michelle Nochisaki, Senior Customer Programs Manager

RE: Proposed Second Amended and Restated Schedule A.1 to the Master Services Agreement with Franklin Energy Services, LLC (Agenda Item #07_C2)

ATTACHMENTS: A. Second Amended and Restated Schedule A.1 to the Master Services Agreement with Franklin Energy Services, LLC
B. Master Services Agreement with Franklin Energy Services, LLC

Dear Executive Committee Members:

Summary:

The proposed Second Amended and Restated Schedule A.1 ("A.1") to the Master Services Agreement ("MSA") with Franklin Energy Services, LLC ("Franklin") would provide MCE customers with continued energy efficiency services, focused on the implementation and expansion of MCE's Home Energy Savings (HES) program.

Background

MCE's HES program provides no-cost energy efficiency services to moderate income households across MCE's service area. Eligible participants receive home upgrades valued at $4,000 to $9,000 on average, such as attic insulation, duct sealing, heat pump hot water heater, mini split heat pump, a smart thermostat and more. MCE has been approved for funding from the California Public Utility Commission ("CPUC") to continue this program through 2027. MCE has contracted with Franklin since May 2019 to implement MCE's HES program.

Under the proposed A.1 (Attachment A), which would be governed by the Board-approved MSA (Attachment B), Franklin would continue to implement MCE's HES program—offering no-cost home assessments and comprehensive energy upgrades to

eligible single-family homeowners and renters. If approved, A.1 would expand program eligibility to reach low-income as well as moderate income homeowners and renters. The proposed A.1 also includes two MCE funding sources which would allow for even more customers to be served. The two funding sources included in the proposed A.1 are MCE's Local Program Fund and Electrification Technical Assistance Fund.

MCE's Local Program Fund

The addition of this funding source would allow Franklin to provide additional electrification measures and the necessary repairs for installation to customers that are not currently covered with CPUC funds. The added MCE funds would allow for a greater number of customers to receive the deep energy savings, electrification adoption, and health, comfort, safety, energy, and cost benefits provided by HES.

MCE's Electrification Technical Assistance Fund

The addition of this funding source would allow Franklin to provide services as a "designated applicant" for the Self-Generation Incentive Program's ("SGIP") heat pump water heater ("HPWH") program. If approved as an SGIP applicant, Franklin would then use the SGIP incentives to offset the HPHW measure cost for up to 60 customers; this financial offset would allow the HES program to provide incentives to additional MCE customers.

Fiscal Impacts:

The duration of the proposed A.1 would be from January 1, 2024 through December 31, 2024. The maximum cost would be $3,018,361, with $2,191,329 allocated to customer incentives.

Expenditures related to the proposed A.1 would be funded from the following three sources:

- Up to $2,937,861 in Energy Efficiency Program funds allocated by the CPUC
- Up to $70,000 in Local Program funds allocated by MCE
- Up to $10,500 in Electrification Technical Assistance funds allocated by MCE

Recommendation:

Approve the proposed Second Amended and Restated Schedule A.1 to the Master Services Agreement with Franklin Energy Services, LLC.

Statement of Work – Second Amended and Restated Schedule A.1

This Second Amended and Restated Schedule A.1 ("Schedule A.1" or "Statement of Work" or "SOW") is entered into on **December 6, 2023,** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and FRANKLIN ENERGY SERVICES, LLC, hereinafter referred to as "Implementer", dated **April 20, 2023** ("Agreement") and is governed by its terms and conditions. If applicable, capitalized but undefined terms herein shall have the meanings set forth in the Agreement.

Implementer will provide the following Services under the Agreement as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Statement of Work.

Overview

Implementer will implement the Home Energy Savings ("HES") Program by delivering residential single-family assessments and direct energy efficiency installs for home energy savings ("HES Program" or "Program").

Implementer shall:

- Provide HES Program services, including:
  - Perform electrification assessments and home upgrades to at least 325 residential single-family units per year (home upgrades must include the delivery of at least one measure included in Table B: 2024 HES Program Measure Payment and Incentive Budget, included below); and
  - Target moderate-income single-family property owners and tenants (who have permission from the relevant property owner) with high utility bills in MCE's service area for potential participation in the Program.
- Provide electrification and/or repair measures via MCE's Local Program Fund.
- Enroll HES customers in the Self-Generation Incentive Program (SGIP) heat pump water heater (HPWH) program via MCE's Electrification Technical Assistance Fund.

Implementer will perform the following tasks in accordance with the Energy Efficiency Program Terms included in Exhibit C of the Master Services Agreement dated April 20, 2023.

Task 1: Program Management

A. **Customer Service Support**. Implementer will provide a live customer support team to respond to Program participant inquiries and requests within two business days, provide Program support, connect Program participants to participating trade allies, and connect Program participants to additional Program resources. The customer support team will be available from 8:30 a.m. – 5:00 p.m. PST Monday through Friday and will monitor Program emails submitted to mce-energysavings@Franklinenergy.com.

B. **Trade Ally Engagement.** Implementer will onboard initial trade allies and provide a single point of contact for each participating trade ally by holding a minimum of two check-in calls per month, as-needed office visits, and support with technical Program questions, and will provide mentoring in the field. Implementer will manage the trade allies, relevant contracts between the trade allies and Implementer, and is responsible for all aspects of home upgrade delivery to Program participants.

C. **Monthly Reporting.** Implementer will ensure all data collected from customers and participating trade allies is shared with MCE's team on an ongoing basis to ensure systems are tested, new data points are added and formatted as needed, and energy savings and payment information is accurate and complete. Implementer will intake all Program assessment questions and CPUC-required data points and submit monthly reports and invoices to MCE. Implementer will work with MCE as needed to complete the Annual or Biannual Budget Advice Letter ("BBAL") process and data requests as required by the CPUC. MCE and Implementer will outline any additional and/or ad hoc reporting as needed throughout the term (defined below).

D. **Coordination with Investor Owned Utilities ("IOUs")/Bay Area Regional Energy Network ("BayREN").** Implementer will coordinate with IOUs, BayREN, other Program implementers, and/or local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs that are administering energy efficiency programs within MCE's service territory as necessary to ensure timely, accurate, and consistent access to data. The CPUC may develop further rules related to coordination between program administrators in the same geographic area, and any relevant party is required to comply with such rules. Upon MCE's request, Implementer will assist MCE with tasks and deliverables as they relate to development of joint cooperation memoranda. Implementer's activities in this Task 1D include: meeting preparation and attendance; coordination across internal teams at MCE and/or IOUs; research; analysis; writing; and editing.

E. **Program Implementation Plan.** Implementer will update the Program Implementation Plan ("PIP"), Program Handbook, and any other necessary Program-related documents to reflect ongoing changes to the Program delivery process and trade ally requirements, and to align with CPUC requirements.

F. **Program Closeout.** If Program is terminated, upon termination of the Program, Implementer will package all project and participant data into a Zip folder and securely transfer it to MCE. Implementer will complete a final Program closeout

report and submit it to MCE within 2 business weeks of written notification by MCE of Program termination.

Deliverables:

- Implementer shall:
  - Provide customer service support;
  - Onboard, engage with, and mentor participating trade allies in the field;
  - Manage the installation of Program participants' home upgrade measures;
  - Report at least monthly to MCE;
  - Coordinate with IOUs, BayREN, other Program implementers, and/or local government agencies as applicable;
  - Update Program-related documents as necessary; and
  - Close out the Program if terminated.

Task 2: Application Platform Support

Implementer will collect and maintain data to assist in the avoidance of double-dipping (which occurs when a customer accesses two ratepayer-funded benefits for the same measures). Implementer will complete routine improvements to the application platform that receives, securely stores, and securely transfers all data and documents required for the Program. After platform updates are released, Implementer will identify, address, and resolve application submission and data collection bugs within a reasonable time so that the Program is interrupted as minimally as possible if at all. Implementer will continue to address ongoing bugs and optimize ongoing data collection processes.

Deliverables:

- Implementer shall provide ongoing Program platform support.

Task 3: Quality Assurance and Control

Implementer will:

Quality Assurance.

- Review all initial applications submitted to the Program.
- Coordinate with trade ally and/or potential Program participants about incomplete applications.
- Ensure Program applications are accurate and complete.
- Ensure data is formatted to meet ongoing reporting criteria updates as requested by MCE.

Quality Control.

- Test home for combustion safety.
- Test installed home upgrade measures for quality installation.
- Coordinate return visits as needed.
- Conduct and complete field inspections which will include full reviews of all field work for the first 5 projects submitted per newly added trade ally.
- Conduct and complete random field inspections of 10 percent of home upgrade projects submitted per trade ally after the first 5 projects are reviewed.
- Increase field inspection quality control as needed to ensure safe, quality, and complete installations.

Deliverables:

- Implementer shall continually complete all tasks listed above in Quality Assurance and Quality Control for a minimum of 10% of units served.

Task 4: Marketing and Outreach

Implementer will:

- Update Marketing & Outreach (M&O) Plan ("M&O Plan") and present updated M&O Plan to MCE Customer Programs and Public Affairs teams for MCE approval within 40 days of commencement date;
- Complete M&O campaign as detailed in the M&O Plan to drive interest in the Program;
- Adjust M&O strategies as needed in coordination with MCE to ensure the Program is maximally enrolled to meet savings, customers served and budget targets;
- Coordinate with local governments, property owners, participating trade allies, and other single-family program implementers as needed to identify good candidates for the Program;
- Coordinate and complete canvassing activity in accordance with the MCE Home Energy Savings Trade Ally Code of Conduct document, which are subject to MCE approval, and part of the M&O Plan.

Tactics and timelines will be incorporated into the updated M&O Plan provided by Implementer within 40 days of commencement date to MCE for Public Affairs team approval. The M&O Plan will be approved within two weeks of receipt; MCE may request two additional rounds of edits to the M&O Plan after it is initially received from Implementer.

Deliverables:

- Implementer shall provide M&O, which will be defined in the updated M&O Plan.

Task 5: Electrification Assessments

Implementer will offer an electrification assessment to Program participants to assess the existing conditions of their homes, identify electrification opportunities and determine feasibility of home upgrades.

Deliverables:

- Implementer shall provide at least 325 electrification assessments.

Task 6: Measures via Local Program Fund

Via MCE's Local Program Fund that includes $70,000, Implementer will provide electrification and/or repair and electrification readiness measures as listed in Table C (below).

Deliverables:

- Implementer shall:
  - Provide measures included in Table C to at least 7 additional homes that would not otherwise receive the measures through the Program; and
  - Cover installation costs and/or repair costs associated with the measures included in Table C.

Task 7: Designated Applicant SGIP Enrollment via Electrification Technical Assistance Fund

Via MCE's Electrification Technical Assistance Fund, MCE will provide up to $10,500 to Implementer to enroll up to 60 HES participants into the Self-Generation Incentive Program (SGIP) heat pump water heater (HPHW) program. Implementer will layer program incentives by offsetting the cost of the HES HPWH installation by the amount awarded to the Implementer through SGIP enrollment. Implementer will provide full service customer education, application and enrollment support, help with time-of-use enrollment as needed and customer service until MCE receives confirmation of SGIP enrollment.

Deliverables:

- Enroll up to 60 HES customers in SGIP;
- Offset cost of HES HPWH installation by the amount awarded to Implementer through SGIP enrollment; and
- Track and provide monthly reports on customer information and enrollment numbers.

Staff

Key staff who will support the Program include:

- Isai Reyes—Program Management
- Justin Kjeldsen—Program Management
- Eric Perez—Project Management, Quality Assurance
- Brett Bishop—Trade Ally Engagement, Quality Control
- Ashley Faircloth —Engineering
- Leonel Campoy—Engineering
- Katie Pearson—Marketing
- Harrison Fegley—Information Management
- Ingrid Victoria—Customer Care Center

The list of key staff members above is subject to change. Should a staff member need to be replaced, Implementer shall ensure that a staff member who has comparable experience serves as the replacement, and MCE shall be notified of the staffing change in writing within four weeks of such replacement.

PAYMENT STRUCTURE

Table A: **January to December 2024 HES Program Delivery Billing Schedule** (Re. Tasks 1-4)

Task	Payment	Estimated Delivery Date
1. Program Management	Time & Materials Estimate: $43,571 per month Total Annual NTE: $522,852	Monthly
2. Application Platform Support	$5,500 per month Total Annual NTE: $66,000	Monthly
3. Quality Assurance and Control	QA: $148 for each unit QC: $920 for each unit Total Annual NTE: $89,824	QA: Per unit, Billed Monthly QC: Per unit, Billed Monthly
4. M&O	Time & Materials Estimate: $11,488 per month Total Annual NTE: $137,856	Monthly
Total 2024 HES Program Delivery Budget	**$816,532**	**Final Delivery for 2024: December 31, 2024**

***** Upon written approval of MCE Senior Customer Programs Manager, to accomplish the scope of services outlined in this Schedule A.1, funds may shift A) between Tasks 1-4; and B) from HES Program Delivery Budget to Incentive Budget.

Table B: **2024 HES Program Measure Payment and Incentive Budget** (Re. Tasks 1 & 5)

Home Upgrade Measure	Payment
Electrification Assessment (325 Assessments)	$175/each (NTE $56,875)
Attic Insulation/Seal Attic Plane	Specified in BBAL
Duct Sealing (typ leakage)	Specified in BBAL
Duct Seal (High Leakage w/added return)	Specified in BBAL
Fuel Sub Mini Split Heat Pumps 12k BTU	Specified in BBAL
Fuel Sub Mini Split Heat Pumps 18k BTU	Specified in BBAL
Fuel Sub Mini Split Heat Pumps 24k BTU	Specified in BBAL
Fuel Sub Heat Pump HVAC 3 ton	Specified in BBAL
Fuel Sub Heat Pump HVAC 4 ton	Specified in BBAL
Fuel Sub Heat Pump HVAC 5 ton	Specified in BBAL
Smart Thermostat	Specified in BBAL
Fuel Sub Heat Pump Water Heater 40G	Specified in BBAL
Fuel Sub Heat Pump Water Heater 50G	Specified in BBAL
Fuel Sub Heat Pump Water Heater 66G	Specified in BBAL
Heat Pump Water Heater 40G	Specified in BBAL
Heat Pump Water Heater 50G	Specified in BBAL
Induction Stoves	Specified in BBAL
Induction Stoves w/ Home Run	Specified in BBAL
Heat Pump Dryers	Specified in BBAL
Heat Pump Washers	Specified in BBAL
Deeply Buried Ducts	Specified in BBAL
Bathroom ECM Fan & LED Light Fixture	Specified in BBAL
Central brushless fan motors (BFM or DC Motor)	Specified in BBAL
Pipe Wrap	Specified in BBAL
Total Incentive Budget	**$2,121,329**

Table C: **Local Program Fund: Electrification and Repair and Electrification Readiness Measures** (Re. Task 6)

Incentive Measures	Category and Per Measure Cost	Estimated Delivery Date
Heat Pump Mini-Split Install	Electrification Measure $5,752.32/unit	Billed monthly, per cost of installation incurred
Heat Pump Water Heater Install	Electrification Measure $7,150/unit	Billed monthly, per cost of installation incurred
Dedicated Circuit Install	Repair and Electrification Readiness Measure $1,250/unit	Billed monthly, per cost of installation incurred

Minor Electrical Repair	Repair and Electrification Readiness Measure $600/unit	Billed monthly, per cost of installation incurred
Plenum Repairs/Replaced	Repair and Electrification Readiness Measure $1,200/unit	Billed monthly, per cost of installation incurred
Duct Repair	Repair and Electrification Readiness Measure $800/unit	Billed monthly, per cost of installation incurred
Total Incentive NTE Amount	**$70,000**	**Final Delivery for March 31st, 2024**

Table D: **Category Allotment for Local Program Fund: Electrification and Repair and Electrification Readiness Measures** (Re. Task 6)

Category	Amount Allotted
Electrification Measures	$51,100
Repair and Electrification Readiness Measures	$18,900
Total Task 6 NTE	**$70,000****

**Any monies included in the Local Program Fund that were unspent in 2023 may be used up until March 31, 2024. Implementer must identify on invoices when monies from the $70,000 Local Program Fund are being used by labeling the expense "Local Program Fund Measure". Upon written approval of MCE Senior Customer Programs Manager, to accomplish the scope of services outlined in Task 6, funds may shift between “Electrification Measures” and “Repair and Electrification Readiness Measures”.

Table E: **Payment Structure for Designated Applicant SGIP Enrollment via Electrification Technical Assistance Fund (**Re. Task 7)

Payment	Delivery Date
$175 per every 1 HES customer enrolled in SGIP	Billed monthly, per enrollment
Total Task 7 NTE: $10,500***	**Final Delivery by December 31, 2024**

***Implementer must identify on invoices when monies from the $10,500 Electrification Technical Assistance Fund are being used by labeling the expense "Electrification Technical Assistance Fund Enrollment".

Table F: Overall 2024 Budget for HES Program

Implementation	Total
HES Program Delivery	$816,532
HES Incentives	$2,121,329
Local Program Fund	$70,000****
Electrification Readiness Fund	$10,500
Total	**$3,018,361**

****This is a maximum estimate as the final number will depend on the amount of Local Program Funds spent in December 2023.

Billing:
Implementer shall bill monthly and according to the payment schedule listed herein and the rate schedule listed in Exhibit B of the Agreement. In no event shall the total cost to MCE for the Services provided under this Statement of Work exceed the maximum sum of **$3,018,361** for the term of the Agreement.

Term of Statement of Work:
This Statement of Work shall commence on **January 1, 2024** and shall terminate on **December 31, 2024**.

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

APPROVED BY
Marin Clean Energy:

By:

Name:

Date:

By:
Chairperson

Date:

Implementer:

By:

Name:

Date:

MASTER SERVICES AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND FRANKLIN ENERGY SERVICES, LLC

THIS MASTER SERVICES AGREEMENT ("Agreement") is made and entered into on April 20, 2023 by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Franklin Energy Services, LLC, a Delaware limited liability company with principal address at: 102 North Franklin Street, Port Washington, WI 53074 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Implementer to provide the services described in this Agreement and each statement of work ("Statement of Work"), which shall be considered Schedules hereto, which are attached hereto and by this reference made a part hereof ("Services");

WHEREAS, MCE and Franklin Energy had a previous agreement, known as the "Third Agreement by and between Marin Clean Energy and Franklin Energy Services, LLC" dated December 3, 2021 ("Third Agreement"), which is hereby terminated as of April 20, 2023, and replaced with this Master Service Agreement. MCE and Franklin agree that the termination period required by the Third Agreement between the parties has been waived to accommodate such immediate termination and start of this new Agreement.

WHEREAS, Implementer desires to provide the Services to MCE;

WHEREAS, Implementer warrants that it is qualified and competent to render the Services set forth herein;

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:

Implementer agrees to provide all of the Services in accordance with the terms and conditions of this Agreement and each Statement of Work entered into by the Parties. The form of Statement of Work is set forth as **Exhibit A**. Services shall also include any other work performed by Implementer pursuant to this Agreement and Statement of Work. In connection with Implementer's provision of the Services, MCE agrees to make available to Implementer all pertinent data and records for review.

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"). Implementer shall provide MCE with Implementer's Federal Tax I.D. number prior to submitting the first invoice. Implementer is responsible for billing MCE in a timely and accurate manner. Implementer 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 **April 20, 2023** ("Effective Date") and shall terminate on **December 31, 2028**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer represents, warrants and covenants that (a) it is a limited liability company duly organized, validly existing and in good standing under the laws of the State of **Delaware** , (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 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 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, Implementer shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions affecting Services that it provides under this Agreement ("Applicable Law")

5.3. LICENSING. At all times during the performance of the Services, Implementer 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. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT. Implementer shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Implementer understands and agrees that Implementer 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. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Implementers State License Board ("CSLB"), as may be applicable.

5.6. SAFETY. At all times during the performance of the Services, Implementer 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 Implementer 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 Implementer 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.

a) Implementer hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Implementer (each, a "Implementer Party," and, collectively, the "Implementer 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 Implementer 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, Implementer 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, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Implementer 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. Implementer 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. Implementer shall comply with the following requirements (the "Quality Assurance Procedures"):**.** 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 Implementer shall not substitute any personnel for those specifically named in Exhibit B, 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. Implementer shall be responsible for obtaining any and all access rights for Implementer Parties, from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and CPUC employees, representatives, agents, designees and contractors to inspect the Services.

6. <u>INSURANCE</u>:

At all times during the Term and the performance of the Services, Implementer 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 updated before final payment may be made to Implementer. Each certificate of insurance shall provide for thirty (30) days' advance written notice to MCE of any cancellation, except for ten (10) days' notice for non-payment of premium. Implementer will provide advance written notice to MCE of any reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only.

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

Should Implementer 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 Implementer for any Services provided during any period of time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Implementer shall maintain a commercial general liability insurance policy in an amount of no less than t**wo 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. Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Implementer in order to perform said Services, Implementer 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 Implementer 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 Implementer 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. PRIVACY AND CYBERSECURITY LIABILITY. Implementer 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. INTENTIONALLY OMITTED.

8. SUBCONTRACTING:

The Implementer 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 the applicable SOW. If Implementer hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall comply with the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, and the applicable SOW.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer contained in Section 5 hereof (only as, and if, applicable to the services to be provided by Subcontractor, and as may be modified to be applicable to Subcontractor, including 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 Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer 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.

Implementer 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, Implementer 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 Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. 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:

Implementer 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"). Provided that MCE has agreed in writing to confidentiality terms acceptable to Implementer to protect the confidentiality of such 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of thirty (30) days upon receipt of written request from MCE. Implementer shall refund any monies erroneously charged. Implementer 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 Implementer 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 Implementer. MCE Data shall also include all data and materials provided by or made available

to Implementer 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 **April 12, 2023**.

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. Implementer 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 Implementer receiving any MCE Data, Implementer 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 **April 12, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer 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. IMPLEMENTER DATA SECURITY MEASURES. Additionally, Implementer 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) Implementer 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). Notwithstanding the foregoing, Implementer may retain whatever MCE Data or Confidential Information is necessary to exercise any of Implementer's surviving rights or obligations hereunder.

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 Implementer or any Implementer Party under this Agreement with MCE funds ("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. In addition, Implementer may keep file reference copies of all Intellectual Property and all documents prepared by Implementer for MCE so long as MCE data is not included.

c) **Intellectual Property shall be owned by MCE upon its creation.** Implementer 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) **Implementer's Pre-Existing Materials.** If, and to the extent Implementer incorporates any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished or used to create, develop, and prepare the Intellectual Property, Implementer hereby grants MCE on behalf of its customers and the CPUC for governmental and regulatory purposes an irrevocable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free license to use any such Implementer's Pre-Existing Materials 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, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials, including improvements thereto and derivatives thereof. Any and all claims to Implementer'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.

Implementer's Pre-Existing Materials include:

- Green Point Rated (GPR) and associated system components and curriculum
- Energy and Electrification Assessment tool
- Climate Calculator
- Energy and Water calculator.
- Implementer's Desktop Review Tools

- Healthy Home Connect
- California Multifamily Existing Building training content
- NGAGE™ system software, including Efficiency Manager™, Efficiency Contact™, and Efficiency Clipboard™

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 seek 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 Implementer shall have the right to seek immediate equitable relief to enjoin any unauthorized use or disclosure of Implementer's Pre-Existing Materials or Implementer Confidential Information, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

Implementer shall be excused for failure to perform Services herein if such Services are prevented by acts of God, strikes, labor disputes or other forces over which Implementer has no control and is actually so prevented from performing.

12. TERMINATION:

12.1. If the Implementer fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, or violates any Applicable Law which applies to its performance hereunder, then MCE may terminate this Agreement by giving twenty (20) business days' written notice to Implementer, provided that Implementer does not cure such default within such twenty (20) day period after receipt of notice from MCE.

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 Implementer, the Implementer 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 Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation 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, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.6(b)) prepared for MCE that MCE has paid for 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. Intentionally Omitted.

12.6. Upon termination of this Agreement for any reason, Implementer shall and shall cause each Implementer Party to bring the Services to an orderly conclusion as directed by 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE, provided, however, that Implementer may in its discretion assign this Agreement or any of its rights under this Agreement to any parent, subsidiary or affiliated business entity of Implementer, with timely written notice to 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 Implementer'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 Implementer 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 Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer shall have the right to pursue all rights and remedies that may be

available at law or in equity. In particular, Implementer shall have right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. 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, Implementer shall indemnify, defend, and hold MCE and its employees, officers, and agents ("MCE Parties"), harmless from and against any and all claims, liabilities, losses, and damages (including, but not limited to, reasonable litigation costs, attorney's fees and costs, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Implementer Parties; b) the failure of a Implementer 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 Implementer Party, provided however, that if such claim, liability, loss or damage is caused by the negligence, recklessness or willful misconduct of both MCE and Implementer, then Implementer's indemnification obligation shall be limited to the proportional extent that such liabilities arise from Implementer's negligence, recklessness or willful misconduct.

EXCEPT WITH REGARD TO IMPLEMENTER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL IMPLEMENTER BE LIABLE HEREUNDER FOR ANY PUNITIVE, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES.

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 Implementer Party shall have rights, nor shall any Implementer 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 Implementer at the following address:

Implementer:	Dean Laube
Address:	102 North Franklin Street Port Washington, WI 53074
Email Address:	dlaube@franklinenergy.com
Telephone No.:	(715) 304-0366

With a copy to:

Implementer:	Corporate Counsel
Address:	102 North Franklin Street Port Washington, WI 53074
Email Address:	legal@franklinenergy.com
Telephone No.:	(262) 284-3838

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.

	☒	*Check applicable Exhibits*	CONTRACTOR'S INITIALS	MCE'S INITIALS
EXHIBIT A.	☒	Form of Statement of Work	DS GW	DS DW
EXHIBIT B.	☒	Rate Schedule	DS GW	DS DW
EXHIBIT C.	☒	Energy Efficiency Program Terms	DS GW	DS DW

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:
Implementer 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 Implementer Party. Neither MCE nor any Implementer 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. INTENTIONALLY OMITTED.

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. 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, Implementer agrees to provide

information to MCE regarding Implementer'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, Implementer agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link: https://form.asana.com/?k=jSGYk4x3sf2dHfSzywc2fg&d=163567039999692 (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, Implementer 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. Implementer shall provide all such information in the timeframe reasonably requested by MCE.

28. 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: Dawn Weisz
A59878416EBC4F8...
Name: Dawn Weisz

Title: CEO

Date: 4/25/2023

By:
Chairperson DocuSigned by:
5185F1BAECF0439...

Date: 4/25/2023

CONTRACTOR:

DocuSigned by:
By: Grace Wu
176120688655418...
Name: Grace Wu

Title: COO

Date: 5/24/2023

MODIFICATIONS TO MASTER SERVICES AGREEMENT SHORT FORM

☒ **Master Services Agreement Form Content Has Been Modified**

List sections affected: ***1, 5.1, 5.2, 5.5, 5.10, 6, 7 (omitted), 8, 9, 10.5, 10.6(b) and (d), 10.7, 11, 12.1, 12.3, 12.5 (omitted), 12.6, 13, 15, 17, and 23 (omitted)***

Approved by MCE Counsel: DocuSigned by: Caroline Lavenue A90D5C36DBF141C... **Date:** 5/4/2023

EXHIBIT A
FORM OF STATEMENT OF WORK

Statement of Work – Schedule A.[#]

This Schedule A._ ("Schedule A.1" or "Statement of Work" or "SOW") is entered into on **[Date]** pursuant to the Master Services Agreement between MARIN CLEAN ENERGY, hereinafter referred to as "MCE", and FRANKLIN ENERGY SERVICES, LLC, hereinafter referred to as "Implementer", dated **April 20, 2023** ("Agreement").

Implementer shall provide the following Services under the Agreement as requested and directed by MCE Customer Programs staff, up to the maximum time/fees allowed under this Statement of Work:

[List scope of services]

Billing:
Implementer 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:

By: _____

Name: _____

Date: _____

By: _____
Chairperson

Date: _____

CONTRACTOR:

By: _____

Name: _____

Date: _____

EXHIBIT B
RATE SCHEDULE

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

Implementer Key Staff Rates

Name	Title	Hourly Rate ($/hour)
Isai Reyes	Senior Program Manager	$160
Justin Kjeldsen	Pacific Regional Director	$165
Eric Perez	Project Specialist	$85
Brett Bishop	Director of Contract Services	$165
Nic Schueller	Engineering Manager	$101.50
Leonel Campoy	Engineering Manager	$101.50
Danna Perry	Marketing Manager	$90
Harrison Fegley	IT Project Manager	$160
Delfino Quezada	Customer Care Center Supervisor	$80

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

EXHIBIT C
Energy Efficiency Program Terms

The terms below shall apply to all Implementer Parties providing Services under the Home Energy Savings ("Program").

1. BILLING, ENERGY USE, AND PROGRAM TRACKING DATA.

a) Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Implementer to be aware of all CPUC requirements applicable to the Services of this Agreement.
b) Implementer shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
c) Implementer shall make available to MCE any revisions to Implementer's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

2. WORKFORCE STANDARDS.

At all times during the Term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Exhibit C, Section 2 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in MCE's Final Implementation Plan. If applicable, "Final Implementation Plan" is defined in the deliverables for the Services listed in the applicable SOW. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

3. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS.

Implementer shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

4. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS

Implementer shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.
4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to- gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in the applicable SOW, if applicable. Implementer shall use modified values upon MCE's request, provided MCE modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE shall determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Implementer shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.

December 6, 2023

TO: MCE Executive Committee

FROM: Alex Valenti, Manager of Customer Programs

RE: Proposed First Agreement with Resource Innovations, Inc.

ATTACHMENT: A. First Agreement with Resource Innovations, Inc. (Agenda Item #07_C3)
B. First Agreement with Resource Innovations, Inc. REDLINED (Agenda Item #07_C.3)

Dear Executive Committee Members:

Summary:

The proposed First Agreement with Resource Innovations, Inc. ("RI") would support MCE's new Commercial Equity Program ("Program"). The Program has secured funding from the California Public Utilities Commission ("CPUC") to provide customers with equity-driven energy saving incentives from 2024 through 2027.

The Program's overarching goal is to implement energy, health, and cost-saving measures tailored to businesses situated in disadvantaged communities and low-income census tracts within MCE's service area.

MCE released a solicitation for a Program implementer in the fall of 2022, and The Energy Alliance Association ("TEAA") was the winning bidder. MCE entered into an agreement with TEAA in February 2023. Midway through the first year of the two-year term, however, it became evident that TEAA was unable to meet the staffing requirements essential for the Program's success. Consequently, in July 2023, MCE and TEAA agreed to transition TEAA's role away from the Program, and MCE decided that a different bidder would be better suited as the Program implementer.

In MCE's 2022 solicitation, RI's bid stood out due to their experience in successfully running similar equity-focused programs, building a robust stakeholder engagement

plan, and meeting modern reporting and auditing needs. This expertise was reflected in their high ranking in our evaluation, placing them as the second-highest bidder RI's demonstrated capabilities make them a suitable choice for fulfilling the Program implementer role.

If approved, the services encompassed in the proposed First Agreement with RI would include stakeholder engagement, Program development, marketing, and overall management throughout the proposed contract term (January 2, 2024 - December 31, 2026).

Fiscal Impacts: The proposed First Agreement with RI is in the amount of $3,126,542, which would be effective from January 2, 2024 through December 31, 2026. Expenditures related to the proposed First Agreement with RI would be funded completely from energy efficiency program funds allocated by the CPUC.

Recommendation: Approve the proposed First Agreement with Resource Innovations, Inc.

MARIN CLEAN ENERGY

STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA

FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RESOURCE INNOVATIONS, INC.

THIS FIRST AGREEMENT ("Agreement") is made and entered into on **December 6, 2023** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Resource Innovations, Inc., a Delaware corporation with principal address at: 719 Main Street, Suite A, Half Moon Bay, CA 94019 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Implementer to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

WHEREAS, Implementer 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:
Implementer 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 Implementer 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"). Implementer shall provide MCE with Implementer's Federal Tax I.D. number prior to submitting the first invoice. Implementer is responsible for billing MCE in a timely and accurate manner. Implementer 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 of **$3,126,542**.

4. TERM OF AGREEMENT:
This Agreement shall commence on **January 2, 2024** ("Effective Date") and shall terminate on **December 31, 2026**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer 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 **Delaware**, (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 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 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, Implementer 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, Implementer 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. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT: Implementer shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Implementer understands and agrees that Implementer 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. At all times during the performance of the Services, Implementer 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, Implementer shall also maintain any payment and/or performance assurances as may be requested by MCE, and subsequently agreed to by the parties during the performance of the Services.

5.6. SAFETY. At all times during the performance of the Services, Implementer 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 applicable to the Services;

(b) abide by all applicable MCE security procedures, rules and regulations provided to Implementer in writing 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 Implementer in writing 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 of 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 Implementer 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.

(a) Implementer hereby represents, warrants and covenants that any employees, members, officers, contractors, subcontractors, and agents of Implementer, but excluding Installers (as defined in Exhibit A) (each, an "Implementer Party," and, collectively, the "Implementer 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 Implementer 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, Implementer 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, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Implementer 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. Implementer 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. Implementer shall comply with the Quality Assurance Procedures identified in Exhibit A (if any) (the "Quality Assurance Procedures"). 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 Implementer shall not substitute any personnel for those specifically named in the Scope of Work, included as Exhibit A, 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: Implementer shall be responsible for obtaining any and all access rights for Implementer Parties, from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and California Public Utilities Commission (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, Implementer 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 Implementer. 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. Coverages may be provided by a combination of primary or excess insurance policies so long as the provision does not inhibit MCE's ability to recover insurance coverage and excess insurance policies are used only to augment coverage after the primary insurance limit is exhausted. Implementer shall provide evidence of both primary and excess insurance policies as applicable.

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

Should Implementer 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 Implementer for any Services provided during any period of time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Implementer shall maintain a commercial general liability insurance policy in an amount of no less than **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 Implementer in order to perform said Services, Implementer 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 Implementer 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 Implementer 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 ☒). Implementer shall maintain professional liability insurance with a policy limit of not less than $1,000,000 per claim. If the deductible or self-insured retention amount exceeds $200,000, MCE may ask for evidence that Implementer has segregated amounts in a special insurance reserve fund, or that Implementer's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection must be provided on a claims-made basis with a retroactive

date (how far back in time a loss can occur for the professional liability policy to cover the claim) prior to the Effective Date. If coverage is cancelled or non-renewed, it must be replaced with another claims made policy form with a "retroactive date" prior to the Effective Date.

6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☒ Implementer 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 claim / $2,000,000 aggregate.

7. FINANCIAL STATEMENTS:

Implementer shall deliver financial statements as may be reasonably requested by MCE from time to time subject to confidential treatment by MCE in accordance with the Confidentiality Agreement between the Parties dated November 21, 2023. 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 Implementer 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 Exhibit A. If Implementer hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Implementer shall ensure the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer 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 Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer 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. Subcontractor shall not be permitted to further subcontract any obligations under this Agreement.

Implementer 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, Implementer 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 Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor. For the avoidance of doubt, Installers (defined in Exhibit A) will not be considered Subcontractors under this Agreement.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Implementer 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Audits shall be at MCE's expense, unless discrepancies are found during the Audit and, in such cases, Implementer will reimburse MCE for the reasonable costs of the audit and Implementer shall refund any monies erroneously charged. Implementer 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. Any such audit will be conducted upon at least thirty (30) days' prior written notice to Implementer.

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 (defined below); 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 Implementer 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 Implementer. MCE Data shall also include all data and materials provided by or made available to Implementer 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 **November 21, 2023**.

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. Implementer 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 Implementer receiving any MCE Data, Implementer 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 **November 21, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer 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. IMPLEMENTER DATA SECURITY MEASURES. Additionally, Implementer 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) Implementer 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 Implementer'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, subject to Implementer's rights in Implementer's Pre-existing Materials, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Implementer or any Implementer 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. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Implementer or to any other party. Implementer shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Implementer 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, Implementer 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.** Implementer 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) **Implementer's Pre-Existing Materials.** If, and to the extent Implementer retains any preexisting ownership rights in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, excluding Implementer Technology and the SaaS Services, Implementer 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 Implementer or any Implementer 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, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials (defined below). Any such Pre-Existing Material that is modified using Intellectual Property under this Agreement is owned by MCE.

"Implementer's Pre-Existing Materials" means (a) Implementer' name, logo, internet domains and all the names, logos, and trademarks associated with its services; (b) products, software, platforms, systems, databases, technology, and tools that are proprietary to Implementer or to its third party licensors ("Implementer Technology"); (c) Implementer's proprietary cloud-based products and its associated documentation, content, data, software, and technology that Implementer markets under the name iEnergy® and that is made available by Implementer on a software-as-a-service basis for the deployment, management and monitoring of energy efficiency programs and for the engagement and management of trade ally networks (the "SaaS Services"); and (d) any other materials and information in any form or medium including any methodologies, procedures, designs, algorithms, techniques, concepts, ideas, know-how, documents, data, content, specifications, equipment and components and other property; that are: (y) owned, developed, licensed, or otherwise acquired by Implementer prior to the Effective Date; or (z) developed, licensed, or otherwise acquired by Implementer after the Effective Date, including during the course of providing Services under this Agreement but without using any MCE Data. Notwithstanding anything to the contrary, Implementer or its licensors retain all rights, title and interests, including without limitation all patents, copyrights, mask works, trade secrets, trademarks, and any other intellectual property and proprietary rights, enhancements, derivative works, and modifications in or related to any Implementer's Pre-Existing Materials.

MCE acknowledges and agrees that Implementer may use Implementer Technology and the SaaS Services internally to perform the Services and that nothing in this Agreement shall grant MCE any rights in or to Implementer's Pre-Existing Materials that are not expressly granted in this Section 10 .6(d) or in the Scope of Services contained in Exhibit A. To the extent that any Implementer's Pre-Existing Materials, excluding Implementer Technology and the SaaS Services, is incorporated or embedded in a deliverable that is provided to MCE under this Agreement and upon payment of Software Configuration fixed fee, Implementer grants MCE a perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use such Implementer's Pre-Existing Materials as necessary for MCE's use in accordance with the Scope of Services contained in Exhibit A and purpose of the Agreement. If MCE will be provided access to Implementer Technology or the SaaS Services, as specified in the Scope of Services contained in Exhibit A, MCE will receive an as-needed, non-exclusive, royalty-free license to access such technology during the term of the Agreement and to bring matters to an orderly conclusion after the termination or conclusion of the Agreement.

MCE and Implementer will work together to ensure that, before each MCE customer or Installer (defined in Exhibit A) receives log in credentials to Implementer Technology or the SaaS Services, that the MCE customer or Installer agrees to a valid and enforceable participation agreement that includes, among other terms, (i) terms protective of Implementer and its rights to ownership of the Implementer Technology; and (ii) a consumer-facing privacy policy in accordance with applicable law that completely and accurately describes the information collection, use and disclosure practices on the user portal. The participation agreement is subject to written approval by both Parties.

"Content" is all information, text and other content provided by MCE or its customers or Installers in or for use with Implementer Technology or the SaaS Services, including, but not limited to, any copyrightable material, or trademarks, service marks and trade names that have been independently developed or acquired by MCE and are provided by MCE to Implementer for inclusion in the Content. Content may include MCE Data and/or Confidential Information as defined in the Agreement. MCE retains all rights, title, and interest in all Content. MCE grants Implementer a non-perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the Content in its performance of the Services under the Agreement. In accordance with section 10.5, upon termination, Implementer shall, at the choice of MCE and with a written request received within thirty (30) days of termination, return all Content transferred and the copies thereof to MCE or shall destroy all the Content and certify to MCE that it has done so.

10.6(d)(i) Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IMPLEMENTER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SAAS SERVICES OR IMPLEMENTER TECHNOLOGY. IMPLEMENTER HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Implementer (a) does not warrant that the SaaS Services or Implementer Technology will (i) be free from errors, (ii) run properly on any or all computer hardware operating systems, (iii) meet requirements of MCE, or (iv) operate in an uninterrupted or error free manner; however, in the event that (i)-(iv) occurs, Implementer will make commercially reasonable efforts to correct them as promptly as possible; (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and MCE acknowledges that the SaaS Service and Implementer Technology may be subject to limitations, delays and other problems inherent in the use of such communication facilities; and (c) is not responsible for any failure or deficiency caused by or associated with circumstances beyond Implementer' reasonable control or acts or omissions of MCE, its employees, or its agents, including without limitation custom scripting or coding, any negligence, willful misconduct, or use of the Implementer Technology or the SaaS Services outside the scope of this Agreement.

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 Implementer shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Implementer'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 Implementer fails to provide the Services required under this Agreement, otherwise fails to comply with the material 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, and is unable to cure such breach within fifteen (15) calendar days after written notice from MCE, then MCE may terminate this Agreement by giving five (5) business days' written notice to Implementer.

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 Implementer, the Implementer 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. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation 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, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(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, Implementer shall and shall cause each Implementer 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(a) 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 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE; provided, however, that Implementer may assign this Agreement in its entirety or its rights, duties or obligations under this Agreement without MCE's consent to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets but only: if the assignee is capable of and willing to perform all the obligations under this Agreement and has a satisfactory financial standing as determined by MCE; and upon 60 days' advance written notice to 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 Implementer'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 Implementer 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 Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer 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, Implementer shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all third party actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, reasonable 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 Implementer Parties; b) the failure of a Implementer 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 Implementer Party; provided that (1) MCE provides prompt written notice to Implementer of such claim and reasonable information, assistance and cooperation in defending the claim and (2) Implementer assumes and controls the defense and settlement of such claim giving MCE a right to consent to any decision that would be binding upon MCE.

18. LIMITATION OF LIABILITY:
To the extent not prohibited by applicable law, Implementer shall not be liable under the contract for any special, indirect, consequential, incidental, exemplary or punitive damages of any kind, including, but not limited to loss of use or loss of profit, except as otherwise expressly provided in this Agreement, regardless of (1) the legal theory on which such liability is based, (2) Implementer having been advised of the possibility of such loss or damage, or (3) whether such loss or damage were reasonably foreseen. In no event shall Implementer's maximum liability in the aggregate arising out of, connected with, or resulting from the Agreement or the performance or breach thereof, exceed the total fee without incentives under this Agreement as found in Table 5. Program Budget in Exhibit B; however, the limitations set forth in this paragraph shall not apply to Implementer's confidentiality obligations, Implementer's indemnification obligations under Section 17 with respect to third party claims, or to the extent caused by Implementer's or its Subcontractors' gross negligence, willful misconduct, or fraud. Nothing in this paragraph is intended to limit recovery available to the extent covered under the insurance policies stipulated in Section 6 (Insurance).

19. 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 Implementer Party shall have rights and nor shall any Implementer Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

20. 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:	Monique McCool
MCE Address:	1125 Tamalpais Avenue San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6049

Notices shall be given to Implementer at the following address:

Implementer:	Resource Innovations, Inc.
Implementer Address:	400 N. Michigan Avenue, S600 Chicago, IL 60611
Email Address:	generalcounsel@resource-innovations.com
Telephone No.:	(650) 761-6456

21. 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.

	☒	***Check applicable Exhibits***	**IMPLEMENTER'S INITIALS**	**MCE'S INITIALS**
EXHIBIT A.	☒	**Scope of Services**		
EXHIBIT B.	☒	**Fees and Payment**		
EXHIBIT C.	☒	**Energy Efficiency Program Terms**		
EXHIBIT D.	☒	**MCE CRM Access Protocols**		

22. 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.

23. INDEPENDENT CONTRACTOR:

Implementer 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 Implementer Party. Neither MCE nor any Implementer 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.

24. TIME:

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

25. THIRD PARTY BENEFICIARIES:
The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

26. 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.

27. 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.

28. 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, Implementer agrees to provide information to MCE regarding Implementer'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, Implementer 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, Implementer 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. Implementer shall provide all such information in the timeframe reasonably requested by MCE.

29. 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:

By: _____

Name: _____

Title: _____

Date: _____

By: _____
Chairperson

Date: _____

IMPLEMENTER:

By: _____

Name: _____

Title: _____

Date: _____

MODIFICATIONS TO STANDARD SHORT FORM

☒ **Standard Short Form Content Has Been Modified**

List sections affected: ***5.5, 5.6, 5.7(a), 5.9, 5.10, 6, 6.4, 6.5, 7, 8, 9, 10.6(b), 10.6(d), 10.6(d)(i) (added), 12.1, 13, 17, 18 (added)***

Approved by MCE Counsel: _____ **Date:** _____

EXHIBIT A
SCOPE OF SERVICES

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

Overview: Implementer shall provide program implementation services for the Commercial Equity Program ("Program"). The Program is focused on providing energy and cost savings measures to MCE commercial customers located in areas that are categorized by the CPUC as disadvantaged or low income ("Eligible Participant(s)" or "Customer(s)"). The Program is designed to provide energy efficiency ("EE") education, comprehensive facility audits, no-cost direct install ("DI") measures, as well as point of sale ("POS") rebates for additional measures to Eligible Participants. "Project" is defined as one or more measures installed at an Eligible Participant site, either immediately or in phases.

For purpose of the Agreement and this Scope of Services, "Installer" means an individual, company, trade ally or trade professional, or other third party who performs any assessment, installation, and construction work for the purpose of putting into service and making operational the EE measure(s) identified in an approved Customer's Project (collectively, "Measure Installation") under the Program. Without limiting Implementer's other obligations under this Agreement in respect to Installers, Implementer shall ensure the following requirements are met: (a) Installers shall not be an employee of the Implementer; (b) Installer shall perform the Measure Installation in accordance with the authorized Installer Participation Agreement; (c) Installers performing Measure Installations shall have entered into a separate written agreement directly with the end-Customer for an approved Customer Project in compliance with the authorized Installer Participation Agreement; and (d) except for Implementer's pass through payment to Installer of the direct install or incentive payment for their Measure Installation under this Agreement, Installers shall not otherwise receive any other payment from the Implementer for the Measure Installation, and the Implementer shall not receive any compensation from the Installer or the end-customer for such Measure Installation services performed by the Installer.

1. Program Planning & Launch Readiness

Task 1.A) Program Implementation Plan

Implementer will develop and execute a Program Implementation Plan ("PIP"), subject to MCE's approval. The PIP will be based on the current CPUC program templates provided by MCE. MCE staff will work with Implementer to refine and create a final Program framework. MCE and Implementer will meet biweekly in order to finalize the PIP.

The PIP will include, but not be limited to, the following:

- Program description and narrative;
- Marketing and Outreach plan ("M&O Plan"), subject to MCE Public Affairs team approval;
- Customer incentive details and delivery;
- Customer technical support description;
- Customer qualifying questionnaire;
- Program Quality Assurance Procedures;
- Details surrounding the stakeholder feedback meetings which will occur twice per year;
- Program performance metrics, including energy and non-energy benefits; and
- Evaluation, Measurement & Verification plan ("EM&V Plan").

Implementer will assist MCE in developing materials for, and hosting, a public CPUC webinar prior to finalizing the PIP. MCE will invite EE stakeholders to provide feedback and input on the draft PIP, which will be reviewed during the webinar. Once the PIP is filed, the Program is considered launched.

Implementer will provide periodic updates to the PIP, as needed, when significant Program modifications are made.

Task 1.A) DELIVERABLE: Implementer to develop and execute PIP.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.B) Marketing and Outreach Planning

Implementer will develop an M&O Plan to attract and engage Eligible Participants. Implementer will collaborate with the MCE Public Affairs team for all related marketing activities.

The M&O Plan will follow the required CPUC-template, and include the following information (to be approved by MCE Public Affairs team):

- Coordinate with MCE's brand look and feel that resonates with Customers and adheres to MCE standards.
- Document how Implementer, Environment Innovations ("EI") (or other qualified subcontractor with equivalent or superior qualifications as documented in writing), local community-based organizations ("CBO"), and Installers will use marketing materials.
- Describe how CBOs and Installers will be sourced to ensure that they can build trust with a diverse set of Eligible Participants who may have been historically denied energy assistance due to size or inequity factors.
- Provide a list of marketing collateral that will be developed to educate Customers on their equipment and energy usage, support the installation of energy savings measures and provide referrals to other services and incentives. Identify who will lead development of the materials (RI, EI or MCE). Materials will be multilingual.
- Develop a multi-channel marketing campaign strategy, in collaboration with MCE, that identifies preferred channels, distribution process, leads and type of content.

Task 1.B) DELIVERABLE: Implementer to develop and finalize M&O Plan.
Estimated Delivery: Within 60 days of Effective Date.

Task 1.C) Measure Development

Implementer will document installed DI or POS measures from the Savings Measure List (Exhibit B, Table 3). All identified measures will save energy (kWh and/or therms) and/or provide health and comfort non-energy benefits as developed by the CPUC. The Savings Measure List may be updated with added, modified, or removed measures as needed upon 60 days' notice from MCE or Implementer and written confirmation of the update.

Implementer will:

- Identify active measure packages, retired measure packages, and MCE-approved calculation methodologies to use as reference points when determining kWh, therms, and bill savings in addition to non-energy benefits.
- Finalize and continue to update the Savings Measure List for review and approval by MCE.
- Integrate Savings Measure List, bill savings and related permutations into iEnergy, Implementer's project facilitation tool.
- Provide a minimum of 30 days' notice to outreach team (which includes outreach managers, Installers, CBOs, the California Green Business Network ["CAGBN"]) of any necessary measure changes.

Task 1.C) DELIVERABLE: Implementer to define Program Savings Measure List.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.D) Partner Engagement

Implementer will be responsible for developing a strong partner network that includes recruiting qualified Installers and outreach team members. Implementer will subcontract with EI (or other qualified subcontractor with equivalent or superior qualifications as documented in writing) as well as CBOs to conduct direct outreach to Eligible Participants.

- EI will manage CBOs, who will host events and recruit Eligible Participants by assisting with Program enrollment.
- EI will manage the CAGBN and green business programs ("GBP"), the staff of which will perform facility assessments, and will refer installation of more projects to qualified Installers, as well as coordinate with Installers to develop Program pipeline and achieve Program outcomes. CAGBN and GBPs will receive an upfront payment for these services.

- Implementer will recruit and manage a roster of Installers to conduct all installations which require licensing and/or permitting. MCE will have the opportunity to provide input on qualification criteria and approval of Installer roster.
- Implementer will manage the Installers directly, providing and monitoring key performance indicators ("KPIs") which promote high customer satisfaction and excellent customer service.
- Implementer will provide Outreach Managers to conduct facility assessments, transfer leads to Installers, and provide project management for projects that require multiple Installers.

Task 1.D) DELIVERABLE: Implementer to engage EI and Installer partners.
Estimated Delivery: On-going.

Task 1.E) Software Configuration

Implementer will configure an instance of iEnergy. iEnergy will provide: a public user interface to customers for enrollment; an onsite assessment tool for Outreach Managers, GBP staff, and CBOs to facilitate targeted walkthrough assessments to identify eligible bill savings measures and to allow Outreach Managers to develop optimized project scopes with the customer in real-time; and articulate project/measure benefits and costs. iEnergy will also educate Customers on complementary programs via the project summary report, which will be customized with MCE branding and provided to Customers. The project summary report will include project details, financing options, return on investment information, next steps, and supplemental information on complementary programs.

Implementer will work with MCE to configure the tool in accordance with the details as described below:

- Set up connection to MCE customer data to support enrollment, targeting and reporting.
- Collect and document requirements related to integration with MCE Customer Relationship Management ("CRM") tool.
- Document eligibility criteria for enrollment screening process. Integrate all required databases to accommodate enrollment screening.
- Develop a workflow for Customer participation, from enrollment to final approval of projects.
- Configure iEnergy Public User Interface, Onsite, and Program Management tools based on requirements and workflow.
- Configure and provide software licenses to Trade Ally Connect ("TAC"), to be accessed by Installers and Implementer.
- Conduct training with all users, including MCE staff as requested.

Task 1.E) DELIVERABLE: Implementer to configure iEnergy instance for Program use.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.F) Customer Relationship Management Integration

Subject to the CRM Access Protocols included in Exhibit D below, Implementer will integrate with MCE CRM platform to provide Program data.

Implementer will:

- Deploy an integration using a web services Application Programming Interface ("API") that will get customer details from MCE and will update MCE's CRM with Program data on projects and customer interactions by:
    - Defining the data requirements for ongoing data exchange.
    - Consuming the MCE API specifications to map and sync desired data.
    - Building, testing, and integrating with MCE CRM.

Task 1.F) DELIVERABLE: Implementer to integrate CRMs between Implementor and MCE systems.
Estimated Delivery: Within 60 days of Effective Date, with periodic updates as needed.

Task 1.G) Document Development

Implementer will develop all required legal documents to facilitate Program delivery, in partnership with and requiring approval from MCE staff as required.

Agreements may include:

- Subcontractor Task Orders
- Installer Participation Agreement
- CBO Memorandum of Understanding
- GBP Memorandum of Understanding
- Customer Participation Agreement, including:
  - Program Terms and Conditions
  - Customer Consent Form
  - Self-Attestation of Program eligibility

Task 1.G) DELIVERABLE: Implementer to develop suite of Program documents.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

2. Program Management and Delivery

Task 2.A) Program M&O

Implementer, EI, and MCE will collectively conduct outreach and Customer acquisition activities, timing, and will document results. Implementer will work with EI to leverage a mix of marketing and in-person Customer engagement.

Implementer will:

- Meet with MCE as needed and/or requested by MCE.
- Document implementation strategies, Customer engagement process, recruitment pathways and estimated numbers of Customers by recruitment pathway in the M&O Plan.
- Maintain and provide weekly updates to a Program marketing schedule, including information on upcoming marketing campaign activities.
- Provide training to Outreach Team on Customer eligibility requirements and how to use the iEnergy tool to validate eligibility with the customer's physical address when in the field.
- Support MCE in the development and dissemination of marketing collateral through direct mail, email and social media channels. Implementer may be asked to provide input on copy for marketing materials.
- Ensure all marketing materials are approved by MCE prior to publication.
- Equip Outreach Team with tools and training to quickly assess each customer's facility, determine the optimal project plan, and communicate project plan to the Customer's key decision-maker.
- Collect data on the number of Customers engaged or enrolled in the Program, events attended by Outreach Team, and which Outreach Team member was involved.
- Translate materials into the most common languages in MCE territory, such as Spanish, Chinese, Vietnamese, Tagalog, Korean, and Khmer. Final language selection will be determined in the M&O plan.

Task 2.A) DELIVERABLE: Implementer to provide Program marketing support.
Estimated Delivery: On-going.

Task 2.B) Participant Services

Implementer will engage 1,400-1,600 Customers as either market support participants ("MSP") or resource acquisition participants ("RAP"). MSPs will have the option to receive a free facility assessment, receive energy savings and education tips, and will be offered a menu of DI measures. Customers who are recruited through the Program will receive information about the Program services and how to sign up. RAPs will be provided with direct installation of no-cost bill savings and health, safety, and comfort ("HSC") measures, and may also choose to continue with deeper savings through incentivized POS measures and sustained engagement with Program personnel.

Implementer will:

- For MSPs, provide a minimum of one of the following services during an in-person visit from an Implementer Outreach Manager or CAGBN team member:
    - Energy savings education/tips
    - Facility assessment
    - Information and/or application assistance for other relevant programs
    - Information about MCE's additional programs and services and how to sign up
    - Referral to an Outreach Manager or Installer for RAP services
- For RAPs, provide one or more of the following services in addition to MSP services:
    - Project management services for projects with multiple technologies
    - No-cost direct installation of energy-saving measures resulting in bill savings
    - Incentives for additional EE measures (i.e., POS measures)
    - Referrals / Assistance to participate in relevant programs (e.g., SGIP HPWH, Green Business Program Certification)
- Provide around 1,200 Customers with MSP Services
- Provide around 900 Customers with RAP Services (of the 1,400-1,600 who already received MSP Services)
- Achieve an 80% conversion rate from MSP Services to RAP Services

Task 2.B) DELIVERABLE: Implementer to engage 1,400- 1,600 MCE customers. Provide MSP Services to around 1,200 Customers and RAP Services to around 900 Customers.
Estimated Delivery: On-going.

Task 2.C) Subcontractor Management

Implementer will be responsible for contracting with and managing EI (or other qualified subcontractor with equivalent or superior qualifications as documented in writing) as a Subcontractor and Implementer Party.

Implementer will:

- Negotiate and execute a contract with EI that includes all required flow downs from this Agreement.
- Provide biweekly data reports to EI to demonstrate Program status, progress towards goal, and areas for improvement.
- Meet with EI on a regular cadence to discuss Program, upcoming changes, opportunities for continuous improvement and system requirements.

Task 2.C) DELIVERABLE: Implementer to manage EI (or other qualified subcontractor with equivalent or superior qualification as documented in writing) to support the Program.
Estimated Delivery: On-going.

Task 2.D) Installer Management

Implementer will recruit, train and manage Installers. Installers are required to adhere to all terms detailed in the Installer Participation Agreement, which will define Program participation requirements, KPIs, measure pricing requirements, and measure and equipment requirements. Implementer will manage an Installer network of up to 10 Installers at the peak of the Program. This number can be increased or decreased based on demand and goals.

Implementer will enter into an agreement with Installers (the Installer Participation Agreement), and Installers will not be considered Subcontractors or Implementer Parties.

Implementer will:

- Develop an Installer Participation Agreement that will be reviewed and approved by MCE, which will be signed by Installers on an annual basis.
- Recruit Installers who specialize in serving small businesses, provide quality service, and are diverse in the type of technologies they provide, and preferably have home-bases in disadvantaged communities with varied ownership structures. Implementer will prioritize recruiting Installers who have local or regional offices within MCE territory.

- Train Installers virtually and cover Program requirements, measure and equipment requirements, and use of the iEnergy system. Training will occur over 3-4 sessions and will be initiated within 90 days of Effective Date. Training will also be recorded and available on-demand.
- Meet with Installer leads on a regular cadence to discuss Program, upcoming changes, opportunities for continuous improvement and to review system requirements.
- Offer weekly "Office Hours" to answer questions that come up as Installers and CAGBN staff are conducting outreach, assessments, installations, and project submittals.
- Pair Outreach Managers, Installers and CAGBN staff in the field to learn from each other and cross train.
- Prioritize paying incentives directly to the Installer, applying it to the project's cost, instantly reducing upfront costs for the Customer.
- Distribute all Installer payments after ensuring that Program requirements are met prior to payment.

Task 2.D) DELIVERABLE: Implementer to recruit and manage Installers to support the Program.
Estimated Delivery: On-going.

Task 2.E) GBP and CBO Management

EI will lead and manage partnerships with all four GBPs operating in the counties of Contra Costa, Marin, Napa, and Solano. CAGBN will use its existing contracts with CBOs, made possible through existing state funding, to expand its reach to targeted Eligible Participants.

Through EI, Implementer will:

- Provide up to $10,000 to one or more of these GBPs and/or CBOs that will use the funding to recruit a diverse range of businesses including those owned by Black, Brown, Indigenous, People of Color (BBIPOCs), LGBTQIA+ individuals, or worker-owned models to become Eligible Participants to enroll in the Program.
- Train GBPs on Program requirements, how to conduct comprehensive assessments, and how to use the iEnergy system.
- Provide relevancy, legitimacy and awareness of the Program offerings.
- Conduct direct outreach to Eligible Participants.
- Assist in identifying potential projects and coordinate with Program Installers.
- Assist in identifying workforce development opportunities for individuals from underprivileged backgrounds (as directed by the CPUC), within the Program's geographical focus, offering opportunities for internships and employment in support of the Program.
- Connect with CPUC-designated environmental and social justice communities and rural communities to ensure uptake.
- Scope, recruit, and manage potential CBO partnerships.

Task 2.E) DELIVERABLE: Implementer to manage GBPs and CBOs.
Estimated Delivery: On-going.

Task 2.F) Project Management

Implementer will employ Outreach Managers who are responsible for Customer recruitment, MSP Services, and project management of RAP Services. Through the Outreach Managers,

Implementer will:

- Act as the Customer's energy concierge, managing the project and Customer Program applications.
- Provide Customer support.
- Offer POS measures for ongoing engagement to encourage the persistence of energy and bill savings.
- With Customer written consent, prepare and submit complementary program applications to simplify the participation process.
- Provide communications to Customers regarding the project process to ensure high Customer satisfaction.

- Track projects and support solutions to barriers to completion.

Task 2.F) DELIVERABLE: Implementer to provide program Outreach Managers.
Estimated Delivery: On-going.

Task 2.G) Incentive Payment Management

Implementer will pay Installers incentive payments based on the successful completion and approval of projects by MCE. Incentive payments will be fixed by measure, as described in the Savings Measure List (Exhibit B, Table 3). No-cost DI measures will receive an incentive that is equivalent to the agreed-upon labor and material cost. POS measures will receive a set incentive amount, which the Implementer will apply to a market-rate invoice.

Implementer will:

- Agree to prefunding for 10% of the overall incentive budget in the Customer Incentive Delivery and Details section of the PIP.
- Collect and/or provide all required documentation for issuance of incentives and related tax obligations (i.e., W-2, ACH, and 1099)

Task 2.G) DELIVERABLE: Implementer to distribute incentives to Installers.
Estimated Delivery: On-going.

Task 2.H) On-Bill Financing Application Support

Implementer will educate Customers on the requirements, benefits and process for Pacific Gas & Electric Co. On Bill Financing, GoGreen Business Financing and any future MCE financing programs/offers. If a Customer chooses to move forward with submitting an application for On Bill Financing or GoGreen Business Financing, Implementer will provide these services at an additional fee (see Exhibit B).

Implementer will:

- Present financing options with each Customer's project summary report.
- Manage application and provide status updates to Customer.

Task 2.H) DELIVERABLE: Implementer to provide on-bill financing support.
Estimated Delivery: On-going.

3. Program Measurement and Verification

Task 3.A) Customer Satisfaction

Implementer will monitor and evaluate Customer satisfaction on an ongoing basis via online survey tools, developed by Implementer's Advisory Services team.

- Survey will include a net promoter score for the Program and Installer and an evaluation of the Customer's experience.
- Follow-up surveys will request information on the HCS benefits experienced by the Customer.
- Data will be collected monthly and provided to MCE. Implementer will evaluate data to inform continuous improvement to the Program design and operations.

Task 3.A) DELIVERABLE: Implementer to complete Customer satisfaction surveys.
Estimated Delivery: Data collected monthly upon Program launch. On-going.

Task 3.B) Quality Assurance Procedures

Implementer will provide Installers with initial training and ongoing mentorship so that MCE Customers receive quality project installations. All Program and measure requirements, including minimal qualifications and performance criteria, will be memorialized and agreed to through an Installer Participation Agreement, which will be submitted by Implementer to MCE for approval. By reinforcing Program training in the field, Implementer will verify that Installers understand and adhere to the Program requirements while simultaneously increasing Customer satisfaction with MCE and the Program while also reducing the post-installation verification costs. All activities will be tracked in the iEnergy tool.

Implementer will:

- Provide Installers with ongoing mentorship and installation training including sales assistance, hands-on technical assistance, and verification of skill proficiency and adherence to Program specifications.
- Train Installers on how to optimize the performance of select installed equipment.
- Perform inspections for 100% of each Installer's first five completed projects; inspection numbers will then be lowered to 10% of submitted projects, randomly selected, pending satisfactory work in the first five completed projects. Inspections may be conducted as ride-alongs during installation or post-installation. Inspections for simple measures (i.e., smart strips, air filters, etc.) may be done virtually, but only if screenshots can be taken to prove installation meets Program standards.
- Perform desk-based review of 100% of Customer information, baseline condition equipment details, measures installed including geotagged photographs, copies of invoices, number and cost of units, incentives applied, and dates of installation for verification.
- Host monthly one on one meetings to provide data-driven reviews with Installers to discuss training opportunities, performance and satisfaction with the process to determine if adjustments are needed.

Task 3.B) DELIVERABLE: Implementer to provide initial Program training and ongoing support to Installers.
Estimated Delivery: On-going.

Task 3.C) Measurement and Verification

Implementer will capture the project information in iEnergy (Implementer's program management platform) making it easily accessible to reviewers and inspectors via the platform. Verification for MSPs will be tracked within the Program Management Platform for those receiving energy education/energy tips and/or assessments. This will include Customer contact information, date of interaction, and any other Program outcomes (e.g., referral to another program, referral to an Installer for DI measures). Verification for RAPs will happen at the project level with Installers submitting Customer information, baseline condition equipment details, measures installed including geotagged photographs, copies of invoices, number and cost of units, incentives applied, and dates of installation. iEnergy has an online checklist to validate projects and uses specific criteria to conduct inspections based on each project's approved measures. During the post-inspection process, Implementer will:

- Select projects based on a randomized sampling or based on past performance of the Installer.
- Verify measure eligibility, installation, and quality of commissioning by completing checklists based on established procedures and criteria.
- Work with the Customer and/or Installer to resolve any discrepancies, if applicable; and
- Finalize, record, and track all quality assurance findings and any necessary project remediations.
- Monitor the approval, expiration, and modifications of CPUC workpapers as well as Database for Energy Efficiency Resources ("DEER") updates to inform Program eligible energy savings and the possible adjustments of Customer estimated bill savings.

Task 3.C) DELIVERABLE: Implementer to provide measurement and verification of project sites.
Estimated Delivery: On-going.

4. Program Reporting

Task 4.A) Bill Savings Tracking and Reporting

Implementer will drive estimated bill savings as the primary outcome of the Program. Bill savings will be estimated by multiplying projected energy savings based on specific measure permutations for approved Savings Measure List. For the purposes of calculating bill savings, Implementer will use $0.31/kWh and $1.50/Therm multiplied by relevant measure permutation data as defined in the applicable measure package (see Table 3).

Implementer will:

- Provide a monthly report to MCE detailing savings measures installed and estimated bill savings.

Task 4.A) DELIVERABLE: Implementer will calculate and report bill savings to MCE.
Estimated Delivery: On-going monthly reporting.

Task 4.B) CPUC Required Reporting

Implementer will provide measure-level detail for measures installed that are claimable to the CPUC for portfolio energy savings, encompassing detailed site information, contact information, and all pertinent project documentation monthly.

Implementer will:

- Define the relevant data needed to be reported within the first 30 days after contract signature.
- Provide Program-level detail for Equity Metrics. A preliminary list of equity metrics was adopted in D23-06-055 and final program-specific metrics will be defined in the PIP, in accordance with CPUC requirements.

Task 4.B) DELIVERABLE: Implementer to provide CPUC reporting as defined by CPUC.
Estimated Delivery: On-going monthly reporting. Ad-hoc reporting, as required by CPUC.

Task 4.C) Performance Tracking & Reporting

Implementer will use a data-driven approach to provide effective and comprehensive end-to-end data collection, analysis, and reporting to drive continuous improvement to reduce risk and increase participation, savings, forecast accuracy, and cost-efficiencies.

Implementer will:

- Provide monthly outreach and marketing reports to MCE to track effectiveness of marketing channels (i.e., Pipeline, Referrals)
- Evaluate Customer data and firmographics to assess and develop projects, maintain effective Customer communications, track program operations and Customer satisfaction KPIs (i.e., facility data, system and equipment info, CPP status, satisfaction ratings, contact information)
- Assess overall Program performance versus goals, review energy/bill savings and Program operations, KPIs, and identify underperforming areas and create action plans.
- Highlight areas for improvement, identify Installers and Subcontractors for rewards and recognition, forecast and allocate resources, and track and report on Customer satisfaction and Program KPIs.

Task 4.C) DELIVERABLE: Implementer to provide monthly performance reports to MCE.
Estimated Delivery: On-going monthly reporting.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

1. Cost of Deliverables

Task 1.B) M&O Plan

For the development and approval of the M&O Plan deliverable per MCE's requirements, Implementer will be compensated for the plan via an annual fixed fee of $13,950, billable at the first year upon MCE approval of completed M&O Plan, then billable at the beginning of each of the subsequent two Program years.

Task 1.E) Software Configuration

For the configuration and launch of the iEnergy Software deliverable per MCE's requirements, Implementer will be compensated with a fixed fee of $109,700 after the first Customer energy savings project (RAP) is installed and verified by an onsite inspection, required documentation is provided by iEnergy (i.e., project summary report) and submitted to MCE for review, and agreed upon project details are populated automatically in MCE's CRM through the API.

Task 2.B) Participant Services

For the implementation costs associated with delivering the Program, Implementer will be compensated based on a combination of a Fixed Fee and a Pay for Performance structure (Table 2). "Project" is defined in Exhibit A and here as one or more measures installed at an Eligible Participant site, either immediately or in phases. Budget will not exceed $1,584,992. Implementer performance payment will be dependent on the calculated bill savings achieved, as defined in Table 1.

Table 1. Performance Compensation Rates

Calculated Monthly Bill Savings Achieved	Correlating RAP Payment per Project Bill Savings
$0-$25	$1,000.00
$26-$100	$1,300.00
$101+	$1,600.00

Table 2. Participant Services Monthly Fixed Fee + Pay for Performance

Payment Type	Not to Exceed Amount	Payment	Deliverable
Fixed Fee	$439,992	$12,222	By Monthly Report
Performance Payment	$1,145,000	$1,000-$1,600 depending on calculated monthly bill savings achieved due to RAP	By MCE Approved RAP Project*
Total Payment	$1,584,992		

*If measures are installed at a site in phases such that increased site bill savings are achieved after the initial RAP payment, MCE will pay Implementer the additional correlating payment on a subsequent invoice. Implementer will clearly note on invoices when this is the case by stating "Additional RAP Payment due to increased monthly bill savings achieved." Measures must be installed at the same site as the original project.

Task 2.E) GBP and CBO Grants

For the grants awarded to Green Business Partners and/or Community Based organizations, Implementer will be compensated with a fixed fee of $10,000 per signed annual agreement, not to exceed $120,000. All funds invoiced for this task will be passed directly through to the GBP or CBO, with specific terms and KPIs. Funds will be delivered to GBP or CBO based partially on performance (i.e., 50% paid upon agreement execution, and the remaining 50% paid upon successful completion of deliverables).

Task 2.G) Incentive Payment Management

For the incentive payments that are passed through to Installers (either as a payment to cover pre-defined labor and material costs for DI measures or an incentive to buy-down the cost of POS measures), Implementer will be compensated through a Pay for Performance structure based on the installed Project's calculated monthly bill savings achieved (Table 1). Additional measures may be added, or measure details may be altered, after this Agreement is executed and will include agreed-upon on Labor & Materials / Incentive costs. Budget will not exceed $1,255,000.

Table 3. Savings Measure List

Measures	DI or POS	Unit	Labor & Materials	Incentive	Measure Package
LED troffer kits and fixtures 2X4	DI	Each	$205.00	n/a	SWLG012-01
LED troffer kits 2X2	DI	Each	$175.00	n/a	SWLG012-01
LED troffer kits 1X4	DI	Each	$175.00	n/a	SWLG012-02
Refrigerator Gaskets	DI	Each	$99.00	n/a	PGECOREF105
Room air purifiers	DI	Each	$419.50	n/a	SWAP008-01
LED recessed downlight retrofit kit	DI	Each	$25.00	n/a	SCE17LG103.2
Smart outlets and timers for vending machines	DI	Each	$214.00	n/a	SWWH017-02
Type A LED Tube	DI	Each	$7.00	n/a	PGECOLTG175
Smart thermostats	DI	Each	$315.00	n/a	SWHC039-04
Occupancy sensing wall switches	DI	Each	$155.00	n/a	PGE3PLTG183
Pipe insulation	DI	Linear Foot	$11.50	n/a	PGECOREF113
LED lamps (int and ext) pin and screw-based lamps	DI	Each	$10.50	n/a	PGECOLTG165
Bluetooth smart power strips	DI	Each	$89.00	n/a	SWAP010-01
Auto door closers – Walk-in	DI	Each	$350.00	n/a	SWCR005-02
Faucet aerators	DI	Each	$14.45	n/a	SWWH019-03
Pre rinse spray valves	DI	Each	$117.24	n/a	SWFS013-01
Interior LED Fixtures - General	POS	Each	n/a	$75.00	SWLG012-01
Auto door closers – Reach-in	POS	Each	n/a	$100.00	SWCR005-02
LED Linear Ambient Fixture Retrofit Kit	POS	Each	n/a	$50.00	SWLG012-01
Type B LED Tube	POS	Each	n/a	$25.00	SWLG018-01
2-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$20.00	SWLG018-01
3-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$30.00	SWLG018-01
4-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$40.00	SWLG018-01
Window Film	POS	Glass Square Foot	n/a	$5.00	SCE13HC002.2
Electric to Electric Water Heater	POS	Each	n/a	$500.00	SWWH031-01
Refrigerated Display Lighting	POS	Linear Foot	n/a	$2.00	PGECOLTG174
Heat pump replacing a gas furnace	POS	CAP-Tons	n/a	$1,000.00	SWHC046-01
Heat pump replacing a heat pump	POS	CAP-Tons	n/a	$1,000.00	SWHC014-02
Evaporator fan coolers for walk in	POS	Each	n/a	$50.00	SWCR004-01
Variable Frequency Drive Motors	POS	Rated-HP	n/a	$50.00	SWHC018-02
Heat Pump Water Heater, Commercial, Fuel Substitution	POS	Each	n/a	$1,000.00	SWWH027-03
LED, High or Low Bay	POS	Each	n/a	$75.00	SWLG011-04
Lighting Retrofit/New- Exterior Wall Mounted	POS	Each	n/a	$75.00	SCE13LG108

Lighting Retrofit/New- Exterior Pole Mounted	POS	Each	n/a	$100.00	SCE13LG102

Task 2.H) Financing Application Support

For demonstrating proof of delivery of an approved financing pre-application to the relevant agency or utility, Implementer will receive a fixed fee of $200 per application, not to exceed $15,000.

2. Time & Materials Rates

Tasks not outlined in this scope of work may be provided on an ad hoc basis, with written approval by MCE. Hours will be billed based on Staff Billing Rates included in Table 4.

Table 4. Staff Billing Rates

Position	Hourly Rates**
Table Vice President, West Coast	$225
Director, CA	$195
Program Manager	$180
Deputy Program Manager	$140
Partner Manager	$170
Senior Energy Engineer	$170
Energy Engineer II	$165
Energy Engineer I	$155
Sr Director, Marketing	$195
Marketing Manager	$170
iEnergy Manager	$150

** Hourly rates shall remain in effect for the entire term of the Agreement.

3. Overall Budget

The following are the budget amounts for each of the tasks and subprograms described herein. Budget amounts listed include 2023-2026 Program years. Upon written request of the Implementer and written approval of MCE Manager of Customer Programs, funds may shift between Deliverables to accomplish the Scope of Services outlined in this Agreement.

Table 5. Program Budget

Deliverable	Total Cost	Payment Structure	Cost Category
Task 1.B) M&O Plan	$41,850	Segmented Fixed Fee, according to details included in Cost of Deliverables section above	Marketing
Task 1.E) Software Configuration	$109,700	Fixed Fee, according to details included in Cost of Deliverables section above	Administration
Task 2.B) Participant Services	$1,584,992	Fixed Fee and Pay for Performance structure Per Project, according to details included in Cost of Deliverables section above	Administration (10%) Direct Install Non-Incentive (90%)
Task 2.E) GBP and CBO Grants	$120,000	Per signed agreement, according to details included in Cost of Deliverables section above	Direct Install Non-Incentive
Task 2.G) Incentive Payments***	$1,255,000	Pay for Performance Per Unit Installed,	Incentives

		according to details included in Cost of Deliverables section above	
Task 2.H) Financing Application Support	$15,000	Per Approved Pre-Application (Not to Exceed)	Direct Install Non-Incentive
Total fee with Incentives	**$3,126,542**		

*** MCE will provide Implementer with 10% of the incentive cost at Program launch to hold in a separate FDIC-insured incentive account in order to expedite Installer and Customer payments. When incentive payments cause the incentive account balance to fall below 5% of the incentive budget, Implementer will bill MCE for another 5% of the incentive budget until the incentive budget is exhausted. Any unspent incentive funds will be returned to MCE at the termination of the Agreement.

Implementer shall bill monthly. Implementer will provide an itemized invoice to MCE Manager of Customer Programs for all Services rendered the month prior. Payment of itemized invoice is subject to MCE Manager of Customer Programs' written approval. In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of $3,126,542** for the term of the Agreement.

EXHIBIT C
Energy Efficiency Program Terms

The terms below shall apply to all Implementer Parties and Installers providing Services under the Commercial Equity Program ("Program").

1. BILLING, ENERGY USE, AND PROGRAM TRACKING DATA:

a) Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Implementer to be aware of all CPUC requirements applicable to the Services of this Agreement.
b) Implementer shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
c) Implementer shall make available to MCE any revisions to Implementer's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

2. WORKFORCE STANDARDS:

At all times during the Term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Exhibit D, Section 2 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in MCE's Final Implementation Plan. If applicable, "Final Implementation Plan" is defined in the deliverables for the Services listed in Exhibit A. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

2.1. HVAC STANDARDS. For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at $3,000 or more, Implementer shall ensure that each worker or technician involved in the project, including all employees and agents of its Subcontractors, meets at least one of the following workforce criteria:

a) Completed an accredited HVAC apprenticeship;
b) Is enrolled in an accredited HVAC apprenticeship;
c) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
d) Has a C-20 HVAC Implementer license issued by the California Implementer's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

2.2. ADVANCED LIGHTING CONTROLS STANDARDS. For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at $2,000 or more, Implementer shall ensure that all workers or technicians involved in the project, including those of its Subcontractors are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

3. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS:

Implementer shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

4. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS:

Implementer shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.

4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to- gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in Exhibit A, if applicable. Implementer shall use modified values upon MCE's request, provided MCE modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE shall determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Implementer shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.

EXHIBIT D
MCE CRM ACCESS PROTOCOLS

Implementer 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.

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

1. MCE CRM access is subject to the NDA between the Parties dated November 21, 2023. .

2. MCE CRM login information, passwords, and any information retrieved from MCE CRM shall be treated as Confidential Information.
    - Confidential Information shall have the same meaning as defined in the MCE NDA between the Parties dated November 21, 2023. .
    - No Implementer employee is to give, tell, or hint at their login information or password to another person under any circumstance.
    - MCE CRM passwords are required to be changed every 90 days.
    - MCE encourages strong passwords (such as minimum character length, and use of special characters) that are not reused for other logins.
    - 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.
    - MCE CRM access shall only be provided to those employees of Implementer who have a "need to access" such information in the course of their duties with respect to Implementer's Services.
        - Implementer employees who access MCE CRM shall only update or view fields related to the tasks assigned.
        - Implementer shall maintain a list of Implementer employees that have been authorized to access MCE CRM.
            - The list shall be updated and verified by Implementer quarterly, upon Implementer employee turnover, and upon MCE's request.
    - Implementer employees who access MCE CRM shall first review and agree to be bound by these MCE CRM Access Protocols.
    - Implementer's use of the CRM is restricted to that which is necessary to provide the Services described in Exhibit A.
    - Except for data obtained by Implementer from MCE's CRM via an MCE-authorized application programming interface, Implementer shall not copy, download, record or reproduce in any way any data from MCE's CRM.
        - Implementer shall only use the MCE-authorized application programming interface to the extent its use is necessary for the completion of contracted work as included in Exhibit A.

5. In the event of an employment status change for an Implementer employee who had been granted access to MCE CRM, Implementer shall provide the following information to MCE:
    - Name and email of pertinent Implementer employee.
    - Notification to MCE within 3 days of employment status change.

6. Implementer having any interaction with an MCE customer shall do the following:
    - Implementer shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE's expectations for customer interactions by Implementer. Failure of Implementer to comply at all times with this section will constitute a material breach pursuant to Agreement section 12, and may result in the discontinuation of work with MCE at MCE's request.
    - Implementer and any approved Subcontractors responding to, or engaging directly with, MCE customers shall respond to direct customer inquiries within 3 business days after the inquiry is received. Unless otherwise agreed to, Implementer and Subcontractors are to provide two options for customer contact (email and phone). Implementer shall provide MCE with a process to document any customer issues, escalations and resolutions.

MARIN CLEAN ENERGY

STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA

FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND RESOURCE INNOVATIONS, INC.

THIS FIRST AGREEMENT ("Agreement") is made and entered into on **December 6, 2023** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and Resource Innovations, Inc., a Delaware corporation with principal address at: 719 Main Street, Suite A, Half Moon Bay, CA 94019 (hereinafter referred to as "Implementer") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Implementer to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

WHEREAS, Implementer 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:
Implementer 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 Implementer 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"). Implementer shall provide MCE with Implementer's Federal Tax I.D. number prior to submitting the first invoice. Implementer is responsible for billing MCE in a timely and accurate manner. Implementer 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 of **$3,126,542**.

4. TERM OF AGREEMENT:
This Agreement shall commence on **January 2, 2024** ("Effective Date") and shall terminate on **December 31, 2026**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. IMPLEMENTER REPRESENTATIONS AND WARRANTIES. Implementer 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 **Delaware**, (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 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 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, Implementer 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, Implementer 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. Implementer shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATORY EMPLOYMENT: Implementer shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, gender identity, age or condition of disability. Implementer understands and agrees that Implementer 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. At all times during the performance of the Services, Implementer 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, Implementer shall also maintain any payment and/or performance assurances as may be requested by MCE, and subsequently agreed to by the parties during the performance of the Services.

5.6. SAFETY. At all times during the performance of the Services, Implementer 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 applicable to the Services;

(b) abide by all applicable MCE security procedures, rules and regulations provided to Implementer in writing 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 Implementer in writing 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 of 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 Implementer 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.

(a) Implementer hereby represents, warrants and covenants that any employees, members, officers, contractors, subcontractors, and agents of Implementer, but excluding Installers (as defined in Exhibit A) (each, an "Implementer Party," and, collectively, the "Implementer 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 Implementer 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, Implementer 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, Implementer shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Implementer 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. Implementer 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. Implementer shall comply with the Quality Assurance Procedures identified in Exhibit A (if any) (the "Quality Assurance Procedures"). 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 Implementer shall not substitute any personnel for those specifically named in the Scope of Work, included as Exhibit A, 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: Implementer shall be responsible for obtaining any and all access rights for Implementer Parties, from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, customers and other third parties in order for MCE and California Public Utilities Commission (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, Implementer 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 Implementer. 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. Coverages may be provided by a combination of primary or excess insurance policies so long as the provision does not inhibit MCE's ability to recover insurance coverage and excess insurance policies are used only to augment coverage after the primary insurance limit is exhausted. Implementer shall provide evidence of both primary and excess insurance policies as applicable.

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

Should Implementer 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 Implementer for any Services provided during any period of time that insurance was not in effect and until such time as the Implementer provides adequate evidence that Implementer has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Implementer shall maintain a commercial general liability insurance policy in an amount of no less than **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 Implementer in order to perform said Services, Implementer 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 Implementer 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 Implementer 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 ☒). Implementer shall maintain professional liability insurance with a policy limit of not less than $1,000,000 per claim. If the deductible or self-insured retention amount exceeds $200,000, MCE may ask for evidence that Implementer has segregated amounts in a special insurance reserve fund, or that Implementer's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection must be provided on a claims-made basis with a retroactive

date (how far back in time a loss can occur for the professional liability policy to cover the claim) prior to the Effective Date. If coverage is cancelled or non-renewed, it must be replaced with another claims made policy form with a "retroactive date" prior to the Effective Date.

6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☒ Implementer 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 claim / $2,000,000 aggregate.

7. FINANCIAL STATEMENTS:

Implementer shall deliver financial statements as may be reasonably requested by MCE from time to time subject to confidential treatment by MCE in accordance with the Confidentiality Agreement between the Parties dated November 21, 2023. 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 Implementer 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 Exhibit A. If Implementer hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Implementer shall ensure the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Implementer 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 Implementer under this Agreement, and shall name MCE as an additional insured under such policies. Implementer 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. Subcontractor shall not be permitted to further subcontract any obligations under this Agreement.

Implementer 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, Implementer 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 Implementer of any of its duties or obligations under this Agreement. Implementer's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Implementer. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor. For the avoidance of doubt, Installers (defined in Exhibit A) will not be considered Subcontractors under this Agreement.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Implementer 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 Implementer's premises or, at MCE's option, Implementer shall provide all records within a maximum of fifteen (15) days upon receipt of written request from MCE. Audits shall be at MCE's expense, unless discrepancies are found during the Audit and, in such cases, Implementer will reimburse MCE for the reasonable costs of the audit and Implementer shall refund any monies erroneously charged. Implementer 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. Any such audit will be conducted upon at least thirty (30) days' prior written notice to Implementer.

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 (defined below); 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 Implementer 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 Implementer. MCE Data shall also include all data and materials provided by or made available to Implementer 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 **November 21, 2023.**

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. Implementer 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 Implementer receiving any MCE Data, Implementer 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 **November 21, 2023**, and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Implementer 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. IMPLEMENTER DATA SECURITY MEASURES. Additionally, Implementer 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) Implementer 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 Implementer'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, subject to Implementer's rights in Implementer's Pre-existing Materials, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Implementer or any Implementer 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. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Implementer or to any other party. Implementer shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Implementer 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, Implementer 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.** Implementer 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) **Implementer's Pre-Existing Materials.** If, and to the extent Implementer retains any preexisting ownership rights in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, excluding Implementer Technology and the SaaS Services, Implementer 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 Implementer or any Implementer 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, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials (defined below). Any such Pre-Existing Material that is modified using Intellectual Property under this Agreement is owned by MCE.

"Implementer's Pre-Existing Materials" means (a) Implementer' name, logo, internet domains and all the names, logos, and trademarks associated with its services; (b) products, software, platforms, systems, databases, technology, and tools that are proprietary to Implementer or to its third party licensors ("Implementer Technology"); (c) Implementer's proprietary cloud-based products and its associated documentation, content, data, software, and technology that Implementer markets under the name iEnergy® and that is made available by Implementer on a software-as-a-service basis for the deployment, management and monitoring of energy efficiency programs and for the engagement and management of trade ally networks (the "SaaS Services"); and (d) any other materials and information in any form or medium including any methodologies, procedures, designs, algorithms, techniques, concepts, ideas, know-how, documents, data, content, specifications, equipment and components and other property; that are: (y) owned, developed, licensed, or otherwise acquired by Implementer prior to the Effective Date; or (z) developed, licensed, or otherwise acquired by Implementer after the Effective Date, including during the course of providing Services under this Agreement but without using any MCE Data. Notwithstanding anything to the contrary, Implementer or its licensors retain all rights, title and interests, including without limitation all patents, copyrights, mask works, trade secrets, trademarks, and any other intellectual property and proprietary rights, enhancements, derivative works, and modifications in or related to any Implementer's Pre-Existing Materials.

MCE acknowledges and agrees that Implementer may use Implementer Technology and the SaaS Services internally to perform the Services and that nothing in this Agreement shall grant MCE any rights in or to Implementer's Pre-Existing Materials that are not expressly granted in this Section 10 .6(d) or in the Scope of Services contained in Exhibit A. To the extent that any Implementer's Pre-Existing Materials, excluding Implementer Technology and the SaaS Services, is incorporated or embedded in a deliverable that is provided to MCE under this Agreement and upon payment of Software Configuration fixed fee, Implementer grants MCE a perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use such Implementer's Pre-Existing Materials as necessary for MCE's use in accordance with the Scope of Services contained in Exhibit A and purpose of the Agreement. If MCE will be provided access to Implementer Technology or the SaaS Services, as specified in the Scope of Services contained in Exhibit A, MCE will receive an as-needed, non-exclusive, royalty-free license to access such technology during the term of the Agreement and to bring matters to an orderly conclusion after the termination or conclusion of the Agreement.

MCE and Implementer will work together to ensure that, before each MCE customer or Installer (defined in Exhibit A) receives log in credentials to Implementer Technology or the SaaS Services, that the MCE customer or Installer agrees to a valid and enforceable participation agreement that includes, among other terms, (i) terms protective of Implementer and its rights to ownership of the Implementer Technology; and (ii) a consumer-facing privacy policy in accordance with applicable law that completely and accurately describes the information collection, use and disclosure practices on the user portal. The participation agreement is subject to written approval by both Parties.

"Content" is all information, text and other content provided by MCE or its customers or Installers in or for use with Implementer Technology or the SaaS Services, including, but not limited to, any copyrightable material, or trademarks, service marks and trade names that have been independently developed or acquired by MCE and are provided by MCE to Implementer for inclusion in the Content. Content may include MCE Data and/or Confidential Information as defined in the Agreement. MCE retains all rights, title, and interest in all Content. MCE grants Implementer a non-perpetual, non-exclusive, non-transferable, non-sublicensable, royalty-free license to use the Content in its performance of the Services under the Agreement. In accordance with section 10.5, upon termination, Implementer shall, at the choice of MCE and with a written request received within thirty (30) days of termination, return all Content transferred and the copies thereof to MCE or shall destroy all the Content and certify to MCE that it has done so.

10.6(d)(i) Disclaimer of Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, IMPLEMENTER MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SAAS SERVICES OR IMPLEMENTER TECHNOLOGY. IMPLEMENTER HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Implementer (a) does not warrant that the SaaS Services or Implementer Technology will (i) be free from errors, (ii) run properly on any or all computer hardware operating systems, (iii) meet requirements of MCE, or (iv) operate in an uninterrupted or error free manner; however, in the event that (i)-(iv) occurs, Implementer will make commercially reasonable efforts to correct them as promptly as possible; (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and MCE acknowledges that the SaaS Service and Implementer Technology may be subject to limitations, delays and other problems inherent in the use of such communication facilities; and (c) is not responsible for any failure or deficiency caused by or associated with circumstances beyond Implementer' reasonable control or acts or omissions of MCE, its employees, or its agents, including without limitation custom scripting or coding, any negligence, willful misconduct, or use of the Implementer Technology or the SaaS Services outside the scope of this Agreement.

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 Implementer shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Implementer'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 Implementer fails to provide the Services required under this Agreement, otherwise fails to comply with the material 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, and is unable to cure such breach within fifteen (15) calendar days after written notice from MCE, then MCE may terminate this Agreement by giving five (5) business days' written notice to Implementer.

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 Implementer, the Implementer 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. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation 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, Implementer shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(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, Implementer shall and shall cause each Implementer 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(a) 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 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 Implementer and may not be transferred or assigned without the express prior written consent of MCE; provided, however, that Implementer may assign this Agreement in its entirety or its rights, duties or obligations under this Agreement without MCE's consent to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets but only: if the assignee is capable of and willing to perform all the obligations under this Agreement and has a satisfactory financial standing as determined by MCE; and upon 60 days' advance written notice to 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 Implementer'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 Implementer 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 Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Implementer 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, Implementer shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all third party actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, reasonable 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 Implementer Parties; b) the failure of a Implementer 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 Implementer Party; provided that (1) MCE provides prompt written notice to Implementer of such claim and reasonable information, assistance and cooperation in defending the claim and (2) Implementer assumes and controls the defense and settlement of such claim giving MCE a right to consent to any decision that would be binding upon MCE.

18. LIMITATION OF LIABILITY:
To the extent not prohibited by applicable law, Implementer shall not be liable under the contract for any special, indirect, consequential, incidental, exemplary or punitive damages of any kind, including, but not limited to loss of use or loss of profit, except as otherwise expressly provided in this Agreement, regardless of (1) the legal theory on which such liability is based, (2) Implementer having been advised of the possibility of such loss or damage, or (3) whether such loss or damage were reasonably foreseen. In no event shall Implementer's maximum liability in the aggregate arising out of, connected with, or resulting from the Agreement or the performance or breach thereof, exceed the total fee without incentives under this Agreement as found in Table 5. Program Budget in Exhibit B; however, the limitations set forth in this paragraph shall not apply to Implementer's confidentiality obligations, Implementer's indemnification obligations under Section 17 with respect to third party claims, or to the extent caused by Implementer's or its Subcontractors' gross negligence, willful misconduct, or fraud. Nothing in this paragraph is intended to limit recovery available to the extent covered under the insurance policies stipulated in Section 6 (Insurance).

19. 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 Implementer Party shall have rights and nor shall any Implementer Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

20. 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:	Monique McCool
MCE Address:	1125 Tamalpais Avenue San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6049

Notices shall be given to Implementer at the following address:

Implementer:	Resource Innovations, Inc.
Implementer Address:	400 N. Michigan Avenue, S600 Chicago, IL 60611
Email Address:	generalcounsel@resource-innovations.com
Telephone No.:	(650) 761-6456

21. 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.

	☒	***Check applicable Exhibits***	**IMPLEMENTER'S INITIALS**	**MCE'S INITIALS**
EXHIBIT A.	☒	**Scope of Services**		
EXHIBIT B.	☒	**Fees and Payment**		
EXHIBIT C.	☒	**Energy Efficiency Program Terms**		
EXHIBIT D.	☒	**MCE CRM Access Protocols**		

22. 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.

23. INDEPENDENT CONTRACTOR:

Implementer 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 Implementer Party. Neither MCE nor any Implementer 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.

24. TIME:

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

25. THIRD PARTY BENEFICIARIES:
The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

26. 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.

27. 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.

28. 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, Implementer agrees to provide information to MCE regarding Implementer'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, Implementer 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, Implementer 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. Implementer shall provide all such information in the timeframe reasonably requested by MCE.

29. 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:	**IMPLEMENTER:**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

By: _____
Chairperson

Date: _____

MODIFICATIONS TO STANDARD SHORT FORM

☒ **Standard Short Form Content Has Been Modified**

List sections affected: 5.5, 5.6, 5.7(a), 5.9, 5.10, 6, 6.4, 6.5, 7, 8, 9, 10.6(b), 10.6(d), 10.6(d)(i) (added), 12.1, 13, 17, 18 (added)

Approved by MCE Counsel: _____ **Date:** _____

EXHIBIT A
SCOPE OF SERVICES

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

Overview: Implementer shall provide program implementation services for the Commercial Equity Program ("Program"). The Program is focused on providing energy and cost savings measures to MCE commercial customers located in areas that are categorized by the CPUC as disadvantaged or low income ("Eligible Participant(s)" or "Customer(s)"). The Program is designed to provide energy efficiency ("EE") education, comprehensive facility audits, no-cost direct install ("DI") measures, as well as point of sale ("POS") rebates for additional measures to Eligible Participants. "Project" is defined as one or more measures installed at an Eligible Participant site, either immediately or in phases.

For purpose of the Agreement and this Scope of Services, "Installer" means an individual, company, trade ally or trade professional, or other third party who performs any assessment, installation, and construction work for the purpose of putting into service and making operational the EE measure(s) identified in an approved Customer's Project (collectively, "Measure Installation") under the Program. Without limiting Implementer's other obligations under this Agreement in respect to Installers, Implementer shall ensure the following requirements are met: (a) Installers shall not be an employee of the Implementer; (b) Installer shall perform the Measure Installation in accordance with the authorized Installer Participation Agreement; (c) Installers performing Measure Installations shall have entered into a separate written agreement directly with the end-Customer for an approved Customer Project in compliance with the authorized Installer Participation Agreement; and (d) except for Implementer's pass through payment to Installer of the direct install or incentive payment for their Measure Installation under this Agreement, Installers shall not otherwise receive any other payment from the Implementer for the Measure Installation, and the Implementer shall not receive any compensation from the Installer or the end-customer for such Measure Installation services performed by the Installer.

1. Program Planning & Launch Readiness

Task 1.A) Program Implementation Plan

Implementer will develop and execute a Program Implementation Plan ("PIP"), subject to MCE's approval. The PIP will be based on the current CPUC program templates provided by MCE. MCE staff will work with Implementer to refine and create a final Program framework. MCE and Implementer will meet biweekly in order to finalize the PIP.

The PIP will include, but not be limited to, the following:

- Program description and narrative;
- Marketing and Outreach plan ("M&O Plan"), subject to MCE Public Affairs team approval;
- Customer incentive details and delivery;
- Customer technical support description;
- Customer qualifying questionnaire;
- Program Quality Assurance Procedures;
- Details surrounding the stakeholder feedback meetings which will occur twice per year;
- Program performance metrics, including energy and non-energy benefits; and
- Evaluation, Measurement & Verification plan ("EM&V Plan").

Implementer will assist MCE in developing materials for, and hosting, a public CPUC webinar prior to finalizing the PIP. MCE will invite EE stakeholders to provide feedback and input on the draft PIP, which will be reviewed during the webinar. Once the PIP is filed, the Program is considered launched.

Implementer will provide periodic updates to the PIP, as needed, when significant Program modifications are made.

Task 1.A) DELIVERABLE: Implementer to develop and execute PIP.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.B) Marketing and Outreach Planning

Implementer will develop an M&O Plan to attract and engage Eligible Participants. Implementer will collaborate with the MCE Public Affairs team for all related marketing activities.

The M&O Plan will follow the required CPUC-template, and include the following information (to be approved by MCE Public Affairs team):

- Coordinate with MCE's brand look and feel that resonates with Customers and adheres to MCE standards.
- Document how Implementer, Environment Innovations ("EI") (or other qualified subcontractor with equivalent or superior qualifications as documented in writing), local community-based organizations ("CBO"), and Installers will use marketing materials.
- Describe how CBOs and Installers will be sourced to ensure that they can build trust with a diverse set of Eligible Participants who may have been historically denied energy assistance due to size or inequity factors.
- Provide a list of marketing collateral that will be developed to educate Customers on their equipment and energy usage, support the installation of energy savings measures and provide referrals to other services and incentives. Identify who will lead development of the materials (RI, EI or MCE). Materials will be multilingual.
- Develop a multi-channel marketing campaign strategy, in collaboration with MCE, that identifies preferred channels, distribution process, leads and type of content.

Task 1.B) DELIVERABLE: Implementer to develop and finalize M&O Plan.
Estimated Delivery: Within 60 days of Effective Date.

Task 1.C) Measure Development

Implementer will document installed DI or POS measures from the Savings Measure List (Exhibit B, Table 3). All identified measures will save energy (kWh and/or therms) and/or provide health and comfort non-energy benefits as developed by the CPUC. The Savings Measure List may be updated with added, modified, or removed measures as needed upon 60 days' notice from MCE or Implementer and written confirmation of the update.

Implementer will:

- Identify active measure packages, retired measure packages, and MCE-approved calculation methodologies to use as reference points when determining kWh, therms, and bill savings in addition to non-energy benefits.
- Finalize and continue to update the Savings Measure List for review and approval by MCE.
- Integrate Savings Measure List, bill savings and related permutations into iEnergy, Implementer's project facilitation tool.
- Provide a minimum of 30 days' notice to outreach team (which includes outreach managers, Installers, CBOs, the California Green Business Network ["CAGBN"]) of any necessary measure changes.

Task 1.C) DELIVERABLE: Implementer to define Program Savings Measure List.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.D) Partner Engagement

Implementer will be responsible for developing a strong partner network that includes recruiting qualified Installers and outreach team members. Implementer will subcontract with EI (or other qualified subcontractor with equivalent or superior qualifications as documented in writing) as well as CBOs to conduct direct outreach to Eligible Participants.

- EI will manage CBOs, who will host events and recruit Eligible Participants by assisting with Program enrollment.
- EI will manage the CAGBN and green business programs ("GBP"), the staff of which will perform facility assessments, and will refer installation of more projects to qualified Installers, as well as coordinate with Installers to develop Program pipeline and achieve Program outcomes. CAGBN and GBPs will receive an upfront payment for these services.

- Implementer will recruit and manage a roster of Installers to conduct all installations which require licensing and/or permitting. MCE will have the opportunity to provide input on qualification criteria and approval of Installer roster.
- Implementer will manage the Installers directly, providing and monitoring key performance indicators ("KPIs") which promote high customer satisfaction and excellent customer service.
- Implementer will provide Outreach Managers to conduct facility assessments, transfer leads to Installers, and provide project management for projects that require multiple Installers.

Task 1.D) DELIVERABLE: Implementer to engage EI and Installer partners.
Estimated Delivery: On-going.

Task 1.E) Software Configuration

Implementer will configure an instance of iEnergy. iEnergy will provide: a public user interface to customers for enrollment; an onsite assessment tool for Outreach Managers, GBP staff, and CBOs to facilitate targeted walkthrough assessments to identify eligible bill savings measures and to allow Outreach Managers to develop optimized project scopes with the customer in real-time; and articulate project/measure benefits and costs. iEnergy will also educate Customers on complementary programs via the project summary report, which will be customized with MCE branding and provided to Customers. The project summary report will include project details, financing options, return on investment information, next steps, and supplemental information on complementary programs.

Implementer will work with MCE to configure the tool in accordance with the details as described below:

- Set up connection to MCE customer data to support enrollment, targeting and reporting.
- Collect and document requirements related to integration with MCE Customer Relationship Management ("CRM") tool.
- Document eligibility criteria for enrollment screening process. Integrate all required databases to accommodate enrollment screening.
- Develop a workflow for Customer participation, from enrollment to final approval of projects.
- Configure iEnergy Public User Interface, Onsite, and Program Management tools based on requirements and workflow.
- Configure and provide software licenses to Trade Ally Connect ("TAC"), to be accessed by Installers and Implementer.
- Conduct training with all users, including MCE staff as requested.

Task 1.E) DELIVERABLE: Implementer to configure iEnergy instance for Program use.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

Task 1.F) Customer Relationship Management Integration

Subject to the CRM Access Protocols included in Exhibit D below, Implementer will integrate with MCE CRM platform to provide Program data.

Implementer will:

- Deploy an integration using a web services Application Programming Interface ("API") that will get customer details from MCE and will update MCE's CRM with Program data on projects and customer interactions by:
    - Defining the data requirements for ongoing data exchange.
    - Consuming the MCE API specifications to map and sync desired data.
    - Building, testing, and integrating with MCE CRM.

Task 1.F) DELIVERABLE: Implementer to integrate CRMs between Implementor and MCE systems.
Estimated Delivery: Within 60 days of Effective Date, with periodic updates as needed.

Task 1.G) Document Development

Implementer will develop all required legal documents to facilitate Program delivery, in partnership with and requiring approval from MCE staff as required.

Agreements may include:

- Subcontractor Task Orders
- Installer Participation Agreement
- CBO Memorandum of Understanding
- GBP Memorandum of Understanding
- Customer Participation Agreement, including:
    - Program Terms and Conditions
    - Customer Consent Form
    - Self-Attestation of Program eligibility

Task 1.G) DELIVERABLE: Implementer to develop suite of Program documents.
Estimated Delivery: Within 30 days of Effective Date, with periodic updates as needed.

2. Program Management and Delivery

Task 2.A) Program M&O

Implementer, EI, and MCE will collectively conduct outreach and Customer acquisition activities, timing, and will document results. Implementer will work with EI to leverage a mix of marketing and in-person Customer engagement.

Implementer will:

- Meet with MCE as needed and/or requested by MCE.
- Document implementation strategies, Customer engagement process, recruitment pathways and estimated numbers of Customers by recruitment pathway in the M&O Plan.
- Maintain and provide weekly updates to a Program marketing schedule, including information on upcoming marketing campaign activities.
- Provide training to Outreach Team on Customer eligibility requirements and how to use the iEnergy tool to validate eligibility with the customer's physical address when in the field.
- Support MCE in the development and dissemination of marketing collateral through direct mail, email and social media channels. Implementer may be asked to provide input on copy for marketing materials.
- Ensure all marketing materials are approved by MCE prior to publication.
- Equip Outreach Team with tools and training to quickly assess each customer's facility, determine the optimal project plan, and communicate project plan to the Customer's key decision-maker.
- Collect data on the number of Customers engaged or enrolled in the Program, events attended by Outreach Team, and which Outreach Team member was involved.
- Translate materials into the most common languages in MCE territory, such as Spanish, Chinese, Vietnamese, Tagalog, Korean, and Khmer. Final language selection will be determined in the M&O plan.

Task 2.A) DELIVERABLE: Implementer to provide Program marketing support.
Estimated Delivery: On-going.

Task 2.B) Participant Services

Implementer will engage 1,400-1,600 Customers as either market support participants ("MSP") or resource acquisition participants ("RAP"). MSPs will have the option to receive a free facility assessment, receive energy savings and education tips, and will be offered a menu of DI measures. Customers who are recruited through the Program will receive information about the Program services and how to sign up. RAPs will be provided with direct installation of no-cost bill savings and health, safety, and comfort ("HSC") measures, and may also choose to continue with deeper savings through incentivized POS measures and sustained engagement with Program personnel.

Implementer will:

- For MSPs, provide a minimum of one of the following services during an in-person visit from an Implementer Outreach Manager or CAGBN team member:
    - Energy savings education/tips
    - Facility assessment
    - Information and/or application assistance for other relevant programs
    - Information about MCE's additional programs and services and how to sign up
    - Referral to an Outreach Manager or Installer for RAP services
- For RAPs, provide one or more of the following services in addition to MSP services:
    - Project management services for projects with multiple technologies
    - No-cost direct installation of energy-saving measures resulting in bill savings
    - Incentives for additional EE measures (i.e., POS measures)
    - Referrals / Assistance to participate in relevant programs (e.g., SGIP HPWH, Green Business Program Certification)
- Provide around 1,200 Customers with MSP Services
- Provide around 900 Customers with RAP Services (of the 1,400-1,600 who already received MSP Services)
- Achieve an 80% conversion rate from MSP Services to RAP Services

Task 2.B) DELIVERABLE: Implementer to engage 1,400- 1,600 MCE customers. Provide MSP Services to around 1,200 Customers and RAP Services to around 900 Customers.
Estimated Delivery: On-going.

Task 2.C) Subcontractor Management

Implementer will be responsible for contracting with and managing EI (or other qualified subcontractor with equivalent or superior qualifications as documented in writing) as a Subcontractor and Implementer Party.

Implementer will:

- Negotiate and execute a contract with EI that includes all required flow downs from this Agreement.
- Provide biweekly data reports to EI to demonstrate Program status, progress towards goal, and areas for improvement.
- Meet with EI on a regular cadence to discuss Program, upcoming changes, opportunities for continuous improvement and system requirements.

Task 2.C) DELIVERABLE: Implementer to manage EI (or other qualified subcontractor with equivalent or superior qualification as documented in writing) to support the Program.
Estimated Delivery: On-going.

Task 2.D) Installer Management

Implementer will recruit, train and manage Installers. Installers are required to adhere to all terms detailed in the Installer Participation Agreement, which will define Program participation requirements, KPIs, measure pricing requirements, and measure and equipment requirements. Implementer will manage an Installer network of up to 10 Installers at the peak of the Program. This number can be increased or decreased based on demand and goals.

Implementer will enter into an agreement with Installers (the Installer Participation Agreement), and Installers will not be considered Subcontractors or Implementer Parties.

Implementer will:

- Develop an Installer Participation Agreement that will be reviewed and approved by MCE, which will be signed by Installers on an annual basis.
- Recruit Installers who specialize in serving small businesses, provide quality service, and are diverse in the type of technologies they provide, and preferably have home-bases in disadvantaged communities with varied ownership structures. Implementer will prioritize recruiting Installers who have local or regional offices within MCE territory.

- Train Installers virtually and cover Program requirements, measure and equipment requirements, and use of the iEnergy system. Training will occur over 3-4 sessions and will be initiated within 90 days of Effective Date. Training will also be recorded and available on-demand.
- Meet with Installer leads on a regular cadence to discuss Program, upcoming changes, opportunities for continuous improvement and to review system requirements.
- Offer weekly "Office Hours" to answer questions that come up as Installers and CAGBN staff are conducting outreach, assessments, installations, and project submittals.
- Pair Outreach Managers, Installers and CAGBN staff in the field to learn from each other and cross train.
- Prioritize paying incentives directly to the Installer, applying it to the project's cost, instantly reducing upfront costs for the Customer.
- Distribute all Installer payments after ensuring that Program requirements are met prior to payment.

Task 2.D) DELIVERABLE: Implementer to recruit and manage Installers to support the Program.
Estimated Delivery: On-going.

Task 2.E) GBP and CBO Management

EI will lead and manage partnerships with all four GBPs operating in the counties of Contra Costa, Marin, Napa, and Solano. CAGBN will use its existing contracts with CBOs, made possible through existing state funding, to expand its reach to targeted Eligible Participants.

Through EI, Implementer will:

- Provide up to $10,000 to one or more of these GBPs and/or CBOs that will use the funding to recruit a diverse range of businesses including those owned by Black, Brown, Indigenous, People of Color (BBIPOCs), LGBTQIA+ individuals, or worker-owned models to become Eligible Participants to enroll in the Program.
- Train GBPs on Program requirements, how to conduct comprehensive assessments, and how to use the iEnergy system.
- Provide relevancy, legitimacy and awareness of the Program offerings.
- Conduct direct outreach to Eligible Participants.
- Assist in identifying potential projects and coordinate with Program Installers.
- Assist in identifying workforce development opportunities for individuals from underprivileged backgrounds (as directed by the CPUC), within the Program's geographical focus, offering opportunities for internships and employment in support of the Program.
- Connect with CPUC-designated environmental and social justice communities and rural communities to ensure uptake.
- Scope, recruit, and manage potential CBO partnerships.

Task 2.E) DELIVERABLE: Implementer to manage GBPs and CBOs.
Estimated Delivery: On-going.

Task 2.F) Project Management

Implementer will employ Outreach Managers who are responsible for Customer recruitment, MSP Services, and project management of RAP Services. Through the Outreach Managers,

Implementer will:

- Act as the Customer's energy concierge, managing the project and Customer Program applications.
- Provide Customer support.
- Offer POS measures for ongoing engagement to encourage the persistence of energy and bill savings.
- With Customer written consent, prepare and submit complementary program applications to simplify the participation process.
- Provide communications to Customers regarding the project process to ensure high Customer satisfaction.

- Track projects and support solutions to barriers to completion.

Task 2.F) DELIVERABLE: Implementer to provide program Outreach Managers.
Estimated Delivery: On-going.

Task 2.G) Incentive Payment Management

Implementer will pay Installers incentive payments based on the successful completion and approval of projects by MCE. Incentive payments will be fixed by measure, as described in the Savings Measure List (Exhibit B, Table 3). No-cost DI measures will receive an incentive that is equivalent to the agreed-upon labor and material cost. POS measures will receive a set incentive amount, which the Implementer will apply to a market-rate invoice.

Implementer will:

- Agree to prefunding for 10% of the overall incentive budget in the Customer Incentive Delivery and Details section of the PIP.
- Collect and/or provide all required documentation for issuance of incentives and related tax obligations (i.e., W-2, ACH, and 1099)

Task 2.G) DELIVERABLE: Implementer to distribute incentives to Installers.
Estimated Delivery: On-going.

Task 2.H) On-Bill Financing Application Support

Implementer will educate Customers on the requirements, benefits and process for Pacific Gas & Electric Co. On Bill Financing, GoGreen Business Financing and any future MCE financing programs/offers. If a Customer chooses to move forward with submitting an application for On Bill Financing or GoGreen Business Financing, Implementer will provide these services at an additional fee (see Exhibit B).

Implementer will:

- Present financing options with each Customer's project summary report.
- Manage application and provide status updates to Customer.

Task 2.H) DELIVERABLE: Implementer to provide on-bill financing support.
Estimated Delivery: On-going.

3. Program Measurement and Verification

Task 3.A) Customer Satisfaction

Implementer will monitor and evaluate Customer satisfaction on an ongoing basis via online survey tools, developed by Implementer's Advisory Services team.

- Survey will include a net promoter score for the Program and Installer and an evaluation of the Customer's experience.
- Follow-up surveys will request information on the HCS benefits experienced by the Customer.
- Data will be collected monthly and provided to MCE. Implementer will evaluate data to inform continuous improvement to the Program design and operations.

Task 3.A) DELIVERABLE: Implementer to complete Customer satisfaction surveys.
Estimated Delivery: Data collected monthly upon Program launch. On-going.

Task 3.B) Quality Assurance Procedures

Implementer will provide Installers with initial training and ongoing mentorship so that MCE Customers receive quality project installations. All Program and measure requirements, including minimal qualifications and performance criteria, will be memorialized and agreed to through an Installer Participation Agreement, which will be submitted by Implementer to MCE for approval. By reinforcing Program training in the field, Implementer will verify that Installers understand and adhere to the Program requirements while simultaneously increasing Customer satisfaction with MCE and the Program while also reducing the post-installation verification costs. All activities will be tracked in the iEnergy tool.

Implementer will:

- Provide Installers with ongoing mentorship and installation training including sales assistance, hands-on technical assistance, and verification of skill proficiency and adherence to Program specifications.
- Train Installers on how to optimize the performance of select installed equipment.
- Perform inspections for 100% of each Installer's first five completed projects; inspection numbers will then be lowered to 10% of submitted projects, randomly selected, pending satisfactory work in the first five completed projects. Inspections may be conducted as ride-alongs during installation or post-installation. Inspections for simple measures (i.e., smart strips, air filters, etc.) may be done virtually, but only if screenshots can be taken to prove installation meets Program standards.
- Perform desk-based review of 100% of Customer information, baseline condition equipment details, measures installed including geotagged photographs, copies of invoices, number and cost of units, incentives applied, and dates of installation for verification.
- Host monthly one on one meetings to provide data-driven reviews with Installers to discuss training opportunities, performance and satisfaction with the process to determine if adjustments are needed.

Task 3.B) DELIVERABLE: Implementer to provide initial Program training and ongoing support to Installers.
Estimated Delivery: On-going.

Task 3.C) Measurement and Verification

Implementer will capture the project information in iEnergy (Implementer's program management platform) making it easily accessible to reviewers and inspectors via the platform. Verification for MSPs will be tracked within the Program Management Platform for those receiving energy education/energy tips and/or assessments. This will include Customer contact information, date of interaction, and any other Program outcomes (e.g., referral to another program, referral to an Installer for DI measures). Verification for RAPs will happen at the project level with Installers submitting Customer information, baseline condition equipment details, measures installed including geotagged photographs, copies of invoices, number and cost of units, incentives applied, and dates of installation. iEnergy has an online checklist to validate projects and uses specific criteria to conduct inspections based on each project's approved measures. During the post-inspection process, Implementer will:

- Select projects based on a randomized sampling or based on past performance of the Installer.
- Verify measure eligibility, installation, and quality of commissioning by completing checklists based on established procedures and criteria.
- Work with the Customer and/or Installer to resolve any discrepancies, if applicable; and
- Finalize, record, and track all quality assurance findings and any necessary project remediations.
- Monitor the approval, expiration, and modifications of CPUC workpapers as well as Database for Energy Efficiency Resources ("DEER") updates to inform Program eligible energy savings and the possible adjustments of Customer estimated bill savings.

Task 3.C) DELIVERABLE: Implementer to provide measurement and verification of project sites.
Estimated Delivery: On-going.

4. Program Reporting

Task 4.A) Bill Savings Tracking and Reporting

Implementer will drive estimated bill savings as the primary outcome of the Program. Bill savings will be estimated by multiplying projected energy savings based on specific measure permutations for approved Savings Measure List. For the purposes of calculating bill savings, Implementer will use $0.31/kWh and $1.50/Therm multiplied by relevant measure permutation data as defined in the applicable measure package (see Table 3).

Implementer will:

- Provide a monthly report to MCE detailing savings measures installed and estimated bill savings.

Task 4.A) DELIVERABLE: Implementer will calculate and report bill savings to MCE.
Estimated Delivery: On-going monthly reporting.

Task 4.B) CPUC Required Reporting

Implementer will provide measure-level detail for measures installed that are claimable to the CPUC for portfolio energy savings, encompassing detailed site information, contact information, and all pertinent project documentation monthly.

Implementer will:

- Define the relevant data needed to be reported within the first 30 days after contract signature.
- Provide Program-level detail for Equity Metrics. A preliminary list of equity metrics was adopted in D23-06-055 and final program-specific metrics will be defined in the PIP, in accordance with CPUC requirements.

Task 4.B) DELIVERABLE: Implementer to provide CPUC reporting as defined by CPUC.
Estimated Delivery: On-going monthly reporting. Ad-hoc reporting, as required by CPUC.

Task 4.C) Performance Tracking & Reporting

Implementer will use a data-driven approach to provide effective and comprehensive end-to-end data collection, analysis, and reporting to drive continuous improvement to reduce risk and increase participation, savings, forecast accuracy, and cost-efficiencies.

Implementer will:

- Provide monthly outreach and marketing reports to MCE to track effectiveness of marketing channels (i.e., Pipeline, Referrals)
- Evaluate Customer data and firmographics to assess and develop projects, maintain effective Customer communications, track program operations and Customer satisfaction KPIs (i.e., facility data, system and equipment info, CPP status, satisfaction ratings, contact information)
- Assess overall Program performance versus goals, review energy/bill savings and Program operations, KPIs, and identify underperforming areas and create action plans.
- Highlight areas for improvement, identify Installers and Subcontractors for rewards and recognition, forecast and allocate resources, and track and report on Customer satisfaction and Program KPIs.

Task 4.C) DELIVERABLE: Implementer to provide monthly performance reports to MCE.
Estimated Delivery: On-going monthly reporting.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

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

1. Cost of Deliverables

Task 1.B) M&O Plan
For the development and approval of the M&O Plan deliverable per MCE's requirements, Implementer will be compensated for the plan via an annual fixed fee of $13,950, billable at the first year upon MCE approval of completed M&O Plan, then billable at the beginning of each of the subsequent two Program years.

Task 1.E) Software Configuration
For the configuration and launch of the iEnergy Software deliverable per MCE's requirements, Implementer will be compensated with a fixed fee of $109,700 after the first Customer energy savings project (RAP) is installed and verified by an onsite inspection, required documentation is provided by iEnergy (i.e., project summary report) and submitted to MCE for review, and agreed upon project details are populated automatically in MCE's CRM through the API.

Task 2.B) Participant Services
For the implementation costs associated with delivering the Program, Implementer will be compensated based on a combination of a Fixed Fee and a Pay for Performance structure (Table 2). "Project" is defined in Exhibit A and here as one or more measures installed at an Eligible Participant site, either immediately or in phases. Budget will not exceed $1,584,992. Implementer performance payment will be dependent on the calculated bill savings achieved, as defined in Table 1.

Table 1. Performance Compensation Rates

Calculated Monthly Bill Savings Achieved	Correlating RAP Payment per Project Bill Savings
$0-$25	~~$[*currently in negotiation*]~~$1,000.00
$26-$100	~~$[*currently in negotiation*]~~$1,300.00
$101+	~~$[*currently in negotiation*]~~$1,600.00

Table 2. Participant Services Monthly Fixed Fee + Pay for Performance

Payment Type	Not to Exceed Amount	Payment	Deliverable
Fixed Fee	$439,992	$12,222	By Monthly Report
Performance Payment	~~$[*currently in negotiation*]~~$1,145,000	~~$[*currently in negotiation*] dependent~~$1,000-$1,600 depending on calculated monthly bill savings achieved due to RAP	By MCE Approved RAP Project*
Total Payment	~~$[*currently in negotiation*]~~$1,584,992		

*If measures are installed at a site in phases such that increased site bill savings are achieved after the initial RAP payment, MCE will pay Implementer the additional correlating payment on a subsequent invoice. Implementer will clearly note on invoices when this is the case by stating "Additional RAP Payment due to increased monthly bill savings achieved." Measures must be installed at the same site as the original project.

Task 2.E) GBP and CBO Grants
For the grants awarded to Green Business Partners and/or Community Based organizations, Implementer will be compensated with a fixed fee of $10,000 per signed annual agreement, not to exceed $120,000. All funds invoiced for this task will be passed directly through to the GBP or CBO, with specific terms and KPIs. Funds will be delivered to GBP or CBO based partially on performance (i.e., 50% paid upon agreement execution, and the remaining 50% paid upon successful completion of

deliverables).

Task 2.G) Incentive Payment Management

For the incentive payments that are passed through to Installers (either as a payment to cover pre-defined labor and material costs for DI measures or an incentive to buy-down the cost of POS measures), Implementer will be compensated through a Pay for Performance structure based on the installed Project's calculated monthly bill savings achieved (Table 1). Additional measures may be added, or measure details may be altered, after this Agreement is executed and will include agreed-upon on Labor & Materials / Incentive costs. Budget will not exceed ~~$[*currently in negotiation*].~~$1,255,000.

Table 3. Savings Measure List

Measures	DI or POS	Unit	Labor & Materials	Incentive	Measure Package
LED troffer kits and fixtures 2X4	DI	Each	$205.00	n/a	SWLG012-01
LED troffer kits 2X2	DI	Each	$175.00	n/a	SWLG012-01
LED troffer kits 1X4	DI	Each	$175.00	n/a	SWLG012-02
Refrigerator Gaskets	DI	Each	$99.00	n/a	PGECOREF105
Room air purifiers	DI	Each	$419.50	n/a	SWAP008-01
LED recessed downlight retrofit kit	DI	Each	$25.00	n/a	SCE17LG103.2
Smart outlets and timers for vending machines	DI	Each	$214.00	n/a	SWWH017-02
Type A LED Tube	DI	Each	$7.00	n/a	PGECOLTG175
Smart thermostats	DI	Each	$315.00	n/a	SWHC039-04
Occupancy sensing wall switches	DI	Each	$155.00	n/a	PGE3PLTG183
Pipe insulation	DI	Linear Foot	$11.50	n/a	PGECOREF113
LED lamps (int and ext) pin and screw-based lamps	DI	Each	$10.50	n/a	PGECOLTG165
Bluetooth smart power strips	DI	Each	$89.00	n/a	SWAP010-01
Auto door closers – Walk-in	DI	Each	$350.00	n/a	SWCR005-02
Faucet aerators	DI	Each	$14.45	n/a	SWWH019-03
Pre rinse spray valves	DI	Each	$117.24	n/a	SWFS013-01
Interior LED Fixtures - General	POS	Each	n/a	$75.00	SWLG012-01
Auto door closers – Reach-in	POS	Each	n/a	$100.00	SWCR005-02
LED Linear Ambient Fixture Retrofit Kit	POS	Each	n/a	$50.00	SWLG012-01
Type B LED Tube	POS	Each	n/a	$25.00	SWLG018-01
2-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$20.00	SWLG018-01
3-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$30.00	SWLG018-01
4-Lamp Linear LED Lamp Hardwired retrofit (Type C)	POS	Each	n/a	$40.00	SWLG018-01
Window Film	POS	Glass Square Foot	n/a	$5.00	SCE13HC002.2
Electric to Electric Water Heater	POS	Each	n/a	$500.00	SWWH031-01
Refrigerated Display Lighting	POS	Linear Foot	n/a	$2.00	PGECOLTG174
Heat pump replacing a gas furnace	POS	CAP-Tons	n/a	$1,000.00	SWHC046-01
Heat pump replacing a heat pump	POS	CAP-Tons	n/a	$1,000.00	SWHC014-02
Evaporator fan coolers for walk in	POS	Each	n/a	$50.00	SWCR004-01
Variable Frequency Drive Motors	POS	Rated-HP	n/a	$50.00	SWHC018-02

Heat Pump Water Heater, Commercial, Fuel Substitution	POS	Each	n/a	$1,000.00	SWWH027-03
LED, High or Low Bay	POS	Each	n/a	$75.00	SWLG011-04
Lighting Retrofit/New- Exterior Wall Mounted	POS	Each	n/a	$75.00	SCE13LG108
Lighting Retrofit/New- Exterior Pole Mounted	POS	Each	n/a	$100.00	SCE13LG102

Task 2.H) Financing Application Support

For demonstrating proof of delivery of an approved financing pre-application to the relevant agency or utility, Implementer will receive a fixed fee of $200 per application, not to exceed $15,000.

2. Time & Materials Rates

Tasks not outlined in this scope of work may be provided on an ad hoc basis, with written approval by MCE. Hours will be billed based on Staff Billing Rates included in Table 4.

Table 4. Staff Billing Rates

Position	Hourly Rates**
Table Vice President, West Coast	$~~250~~225
Director, CA	$~~215~~195
Program Manager	$~~185~~180
Deputy Program Manager	$~~145~~140
Partner Manager	$~~185~~170
Senior Energy Engineer	$~~185~~170
Energy Engineer II	$~~175~~165
Energy Engineer I	$~~165~~155
Sr Director, Marketing	$~~225~~195
Marketing Manager	$~~185~~170
iEnergy Manager	$~~160~~150

** Hourly rates shall remain in effect for the entire term of the Agreement.

3. Overall Budget

The following are the budget amounts for each of the tasks and subprograms described herein. Budget amounts listed include 2023-2026 Program years. Upon written request of the Implementer and written approval of MCE Manager of Customer Programs, funds may shift between Deliverables to accomplish the Scope of Services outlined in this Agreement.

Table 5. Program Budget

Deliverable	Total Cost	Payment Structure	Cost Category
Task 1.B) M&O Plan	$41,850	Segmented Fixed Fee, according to details included in Cost of Deliverables section above	Marketing
Task 1.E) Software Configuration	$109,700	Fixed Fee, according to details included in Cost of Deliverables section above	Administration
Task 2.B) Participant Services	~~$[*currently in negotiation*]~~$1,584,992	Fixed Fee and Pay for Performance structure Per Project, according to details included	Administration ~~[%*currently in negotiation*]~~(10%)

		in Cost of Deliverables section above	Direct Install Non-Incentive ~~[%*currently in negotiation*]~~(90%)
Task 2.E) GBP and CBO Grants	$120,000	Per signed agreement, according to details included in Cost of Deliverables section above	Direct Install Non-Incentive
Task 2.G) Incentive Payments***	~~$[*currently in negotiation*]~~$1,255,000	Pay for Performance Per Unit Installed, according to details included in Cost of Deliverables section above	Incentives
Task 2.H) Financing Application Support	$15,000	Per Approved Pre-Application (Not to Exceed)	Direct Install Non-Incentive
~~Total Not to Exceed Amount (including incentives)~~Total fee with Incentives	**$3,126,542**		

*** MCE will provide Implementer with 10% of the incentive cost at Program launch to hold in a separate FDIC-insured incentive account in order to expedite Installer and Customer payments. When incentive payments cause the incentive account balance to fall below 5% of the incentive budget, Implementer will bill MCE for another 5% of the incentive budget until the incentive budget is exhausted. Any unspent incentive funds will be returned to MCE at the termination of the Agreement.

Implementer shall bill monthly. Implementer will provide an itemized invoice to MCE Manager of Customer Programs for all Services rendered the month prior. Payment of itemized invoice is subject to MCE Manager of Customer Programs' written approval. In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of $3,126,542** for the term of the Agreement.

EXHIBIT C
Energy Efficiency Program Terms

The terms below shall apply to all Implementer Parties and Installers providing Services under the Commercial Equity Program ("Program").

1. BILLING, ENERGY USE, AND PROGRAM TRACKING DATA:

a) Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). For the avoidance of doubt, it is the responsibility of Implementer to be aware of all CPUC requirements applicable to the Services of this Agreement.
b) Implementer shall make available to MCE upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts.
c) Implementer shall make available to MCE any revisions to Implementer's program theory and logic model ("PTLM") and results from its quality assurance procedures, and comply with all MCE EM&V requirements, including reporting of progress and evaluation metrics.

2. WORKFORCE STANDARDS:

At all times during the Term of the Agreement, Implementer shall comply with, and shall cause all Implementer Parties to comply with, the workforce qualifications, certifications, standards and requirements set forth in this Exhibit D, Section 2 ("Workforce Standards"). The Workforce Standards shall be included in their entirety in MCE's Final Implementation Plan. If applicable, "Final Implementation Plan" is defined in the deliverables for the Services listed in Exhibit A. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by MCE, Implementer shall provide all documentation necessary to demonstrate to MCE's reasonable satisfaction that Implementer has complied with the Workforce Standards.

2.1. HVAC STANDARDS. For any non-residential project pursuant to this Agreement installing, modifying or maintaining a Heating Ventilation and Air Conditioning ("HVAC") system or component with incentives valued at $3,000 or more, Implementer shall ensure that each worker or technician involved in the project, including all employees and agents of its Subcontractors, meets at least one of the following workforce criteria:

a) Completed an accredited HVAC apprenticeship;
b) Is enrolled in an accredited HVAC apprenticeship;
c) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
d) Has a C-20 HVAC Implementer license issued by the California Implementer's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

2.2. ADVANCED LIGHTING CONTROLS STANDARDS. For any non-residential project pursuant to this Agreement involving installation, modification, or maintenance of lighting controls with incentives valued at $2,000 or more, Implementer shall ensure that all workers or technicians involved in the project, including those of its Subcontractors are certified by the California Advanced Lighting Controls Training Program ("CALTP"). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

3. COORDINATION WITH OTHER PROGRAM ADMINISTRATORS:

Implementer shall coordinate with other Program Administrators, including investor-owned utilities and local government agencies authorized by the CPUC to implement CPUC-directed energy efficient programs, administering energy efficiency programs in the same geographic area as MCE. These other Program Administrators include: Pacific Gas and Electric Company and Bay Area Regional Energy Network. The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

4. MEASUREMENT AND VERIFICATION REQUIREMENTS, INCLUDING GUIDELINES ABOUT NORMALIZED METERED ENERGY CONSUMPTION ("NMEC") DESIGN REQUIREMENTS:

Implementer shall:

1. Only enroll customers that qualify for Program services.
2. Comply with current policies, procedures, and other required documentation as required by MCE;
3. Report Customer Participation Information to MCE.

4. Work with MCE's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC which independent variables shall be normalized.

Throughout the Term, MCE may identify new net lifecycle energy savings estimates, net-to- gross ratios, effective useful lives, or other values that may alter Program Net Lifecycle Energy Savings, as defined in Exhibit A, if applicable. Implementer shall use modified values upon MCE's request, provided MCE modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. MCE shall determine any budget increases or decreases in its sole discretion.

For Programs claiming to-code savings: Implementer shall comply with Applicable Law and work with MCE to address elements in its Program designs and Implementation Plans, such as:

1. Identifying where to-code savings potential resides;
2. Specifying which equipment types, building types, geographic allocations, and/or customer segments promise cost-effective to-code savings;
3. Describing the barriers that prevent code-compliant equipment replacements;
4. Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
5. Detailing the program interventions that would effectively accelerate equipment turnover.

EXHIBIT D
MCE CRM ACCESS PROTOCOLS

Implementer 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.

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

1. MCE CRM access is subject to the NDA between the Parties dated November 21, 2023. .

2. MCE CRM login information, passwords, and any information retrieved from MCE CRM shall be treated as Confidential Information.
    - Confidential Information shall have the same meaning as defined in the MCE NDA between the Parties dated November 21, 2023. .
    - No Implementer employee is to give, tell, or hint at their login information or password to another person under any circumstance.
    - MCE CRM passwords are required to be changed every 90 days.
    - MCE encourages strong passwords (such as minimum character length, and use of special characters) that are not reused for other logins.
    - 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.
    - MCE CRM access shall only be provided to those employees of Implementer who have a "need to access" such information in the course of their duties with respect to Implementer's Services.
        - Implementer employees who access MCE CRM shall only update or view fields related to the tasks assigned.
        - Implementer shall maintain a list of Implementer employees that have been authorized to access MCE CRM.
            - The list shall be updated and verified by Implementer quarterly, upon Implementer employee turnover, and upon MCE's request.
    - Implementer employees who access MCE CRM shall first review and agree to be bound by these MCE CRM Access Protocols.
    - Implementer's use of the CRM is restricted to that which is necessary to provide the Services described in Exhibit A.
    - Except for data obtained by Implementer from MCE's CRM via an MCE-authorized application programming interface, Implementer shall not copy, download, record or reproduce in any way any data from MCE's CRM.
        - Implementer shall only use the MCE-authorized application programming interface to the extent its use is necessary for the completion of contracted work as included in Exhibit A.

5. In the event of an employment status change for an Implementer employee who had been granted access to MCE CRM, Implementer shall provide the following information to MCE:
    - Name and email of pertinent Implementer employee.
    - Notification to MCE within 3 days of employment status change.

6. Implementer having any interaction with an MCE customer shall do the following:
    - Implementer shall comply at all times during the Term with any MCE-provided MCE co-branding and/or customer engagement protocol that provides MCE's expectations for customer interactions by Implementer. Failure of Implementer to comply at all times with this section will constitute a material breach pursuant to Agreement section 12, and may result in the discontinuation of work with MCE at MCE's request.
    - Implementer and any approved Subcontractors responding to, or engaging directly with, MCE customers shall respond to direct customer inquiries within 3 business days after the inquiry is received. Unless otherwise agreed to, Implementer and Subcontractors are to provide two options for customer contact (email and phone). Implementer shall provide MCE with a process to document any customer issues, escalations and resolutions.

December 1, 2023

TO: MCE Technical Committee

FROM: Paul Krebs, Power Procurement Manager

RE: Proposed Amended and Restated Power Purchase Agreement with Golden Fields Solar IV, LLC (Agenda Item #07 C.4)

ATTACHMENTS: Amended and Restated Renewable Power Purchase Agreement Between Marin Clean Energy and Golden Fields Solar IV, LLC

Dear Technical Committee Members:

Summary:
MCE and Golden Fields Solar IV, LLC ("Golden Fields") are parties to a Renewable Power Purchase Agreement (the "PPA"), executed February 4, 2022, for deliveries from a 100 megawatt (MW) solar project and a co-located 92 MW battery energy storage facility with a 4 hour duration located in Fresno, CA.

The project owner, Clearway, notified MCE that due to unprecedented, market wide challenges, a price adjustment to the PPA would be required to preserve the viability of the project. Through negotiations with Clearway, MCE staff worked to minimize the price increase while adding beneficial terms including the buyer right to charge the storage facility with grid energy which could increase ancillary service revenue for MCE. The PPA was also updated with references to the latest California Public Utilities ("CPUC") Mid-Term Reliability ("MTR") decision D.23-02-040 to ensure that the project is fully compliant with current CPUC MTR rules and regulations.

The Golden Fields project is a valuable addition to MCE's portfolio. As MCE's second co-located solar + storage project, it will produce clean energy to charge the battery during the day and can discharge energy when MCE determines it is needed most. This serves as a hedge against MCE's purchase from the market in the early morning and evening hours when prices tend to be the most volatile. In addition, this provides valuable resource adequacy (RA) and will help satisfy CPUC compliance obligations. By agreeing to this amendment, MCE would be preserving its rights to an important

resource from a portfolio, compliance, and cost mitigation perspectives.

Fiscal Impacts:

The impact from the PPA price increase will not impact the FY 23/24 budget and will be accounted for in future energy budget line items starting in FY 25/26.

Recommendation:

Approve the attached Amended and Restated Renewable Power Purchase Agreement Between Marin Clean Energy and Golden Fields Solar IV, LLC.

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Golden Fields Solar IV, LLC, a Delaware limited liability company ("**Seller**")

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

Description of Facility: A dedicated and separately metered 100 MW solar photovoltaic generating facility, along with a co-located and dedicated 92 MW/368 MWh battery energy storage facility, which is adjacent to a larger solar photovoltaic and energy storage facility being developed at the same Site, all located in Kern County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
CEC Precertification Obtained	August 1, 2024
Documentation of Conditional Use Permit if required: [X] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X] EIR	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Expected Construction Start Date	August 1, 2024
Deliverability Status Obtained	April 1, 2025
Initial Synchronization	October 15, 2024
Network Upgrades completed	October 1, 2024
Expected Commercial Operation Date	June 1, 2025

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

Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	
3	
4	
5	
6	

7	[redacted]
8	
9	
10	
11	
12	
13	
14	
15	

Guaranteed Capacity: 100 MW

Storage Contract Capacity: 92 MW (4-hour)

Storage Contract Output: 368 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Minimum Efficiency Rate: [redacted]

RA Deficiency Amount Cap:

Month	Cap ($/kW-month)
January	[redacted]
February	

March		[redacted]	
April			
May			
June			
July			
August			
September			
October			
November			
December			

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	[redacted]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	[redacted]

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☒ Deliverability Status: on and after the Commercial Operation Date
- ☒ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security:

Development Security: [redacted]

Performance Security: [redacted]

TABLE OF CONTENTS

Page

Exhibits:

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement ("**Agreement**") is entered into as of [__], 2023 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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 Renewable Power Purchase Agreement, dated as of February 4, 2022 (the "**Original Effective Date**"), as amended pursuant to that certain First Amendment to Renewable Power Purchase Agreement, dated as of July 21, 2022 (collectively, the "**Original Agreement**"); and

WHEREAS, the Parties desire to amend and restate the Original Agreement 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 hereby agree to amend and restate the Original Agreement as follows:

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 3.11(d).

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

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

policies or operations of such Person. For purposes of this Agreement, Clearway Energy, Inc. shall be deemed to be an Affiliate of Seller.

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

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

"**Approved Forecast Vendor**" means (x) CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Sections 4.3(c) and 4.3(d).

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

"**Availability Adjustment**" or "**AA**" has the meaning set forth in Exhibit P.

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

"**Average Expected Energy Report**" means the annual report delivered by Seller pursuant to Section 4.3(a).

"**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.

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

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

"**Buyer Bid Curtailment**" means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted to be produced from the Facility for a period of time; and

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

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

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

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

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

"**Buyer Curtailment Order**" means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, (ii) a reduction of Facility Energy directed by CAISO during Settlement Intervals with a Negative LMP, (iii) a reduction of Facility Energy due to Buyer's participation in the Ancillary Services market, or (iv) a reduction in Directly Delivered Generating Facility Energy due to Buyer's issuance of Charging Notices or Discharging Notices in violation of the Operating Procedures.

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

"**Buyer's Default**" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.10(a).

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

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

"**CAISO Charges Invoice**" has the meaning set forth in Exhibit D.

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

"**CAISO Operating Order**" means "Operating 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, 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.

"**CAISO VER Forecast**" means the forecast of output provided by CAISO pursuant to Section 4.8.2.1.2 and Appendix Q of the CAISO Tariff, as such provisions may be modified or amended from time to time.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Storage Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, or used for compliance purposes, including Resource Adequacy Benefits.

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

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

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

"**CEQA**" means the California Environmental Quality Act.

"**Change of Control**" means 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 or otherwise ceases to retain the ability to control the

decision making of Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

"**Charging Energy**" means the as-available Generating Facility Energy or Energy from the CAISO Grid, less Electrical Losses, if any, delivered to the Storage Facility pursuant to a Charging Notice or in connection with a Storage Capacity Test. All Charging Energy shall be used solely to charge the Storage Facility.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, including in connection with a Storage Capacity Test, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**Claim**" has the meaning set forth in Section 16.2(a).

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

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

"**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**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount equal to [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.11(b).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.11(b).

"**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 Capacity**" means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

"**Contract Price**" has the meaning set forth on the Cover Sheet and is each of the Renewable Rate and 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 each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

"**COVID-19**" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

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

"**CPUC System RA Penalty**" means the penalties for "System Procurement Deficiency" adopted by the CPUC in its Decision 10-06-036, as may be updated or supplemented from time to time.

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

"**Curtailment Cap**" is the yearly quantity per Contract Year, in MWh, equal to [redacted]

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

(a) a curtailment ordered by CAISO, including through the ADS or a CAISO Operating Order, 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 or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations, or due to physical or operational limitations on the transfer of electric power, under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

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

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

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

"**Dedicated Interconnection Capacity**" has the meaning set forth in Section 4.12.

"**Deemed Delivered Energy**" means the amount of Energy that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period or Buyer's unexcused failure to take delivery of the Product, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such curtailments or unexcused failure to take delivery of the Product.

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

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Deliverability Status**" [redacted]

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

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

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

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

"**Directly Delivered Generating Facility Energy**" means that portion of Generating Facility Energy that is delivered directly to the Delivery Point and is not Charging Energy or Discharging Energy.

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage 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 Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**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 Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O by dividing Energy Out by Energy In.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Directly Delivered Generating Facility Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

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

"**Energy**" means electrical energy measured in MWh.

"**Energy In**" has the meaning set forth in Exhibit O.

"**Energy Out**" has the meaning set forth Exhibit O.

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

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

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

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

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

"**Expected Energy**" means the quantity of Energy that Seller expects to be able to deliver to Buyer as Directly Delivered Generating Facility Energy or to the Storage Facility as Charging Energy from the Generating Facility during each Contract Year in the quantity specified on the Cover Sheet.

"**Facility**" means the Generating Facility and the Storage Facility.

"**Facility Energy**" means the sum of Directly Delivered Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meters.

"**Facility Meters**" means the Generating Facility Meter and Storage Facility Meter, which are CAISO Approved Meters and will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, each Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use, as it impacts delivered Energy.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Flexible Capacity**" has the meaning set forth in the CAISO Tariff.

"**Flexible Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

"**Force Majeure Event**" has the meaning set forth in Section 10.1(a).

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Forecasting Penalty**" means for each hour as to which Seller is required to provide a notification to Buyer as required in Section 4.3(e) and does not provide such notification and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Generating Facility Energy due to such failure of Seller to provide such notification, the product of (A) the absolute difference (if any) between (i) the expected Generating Facility Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Generating Facility Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the Real-Time Price (if greater than Zero Dollars ($0)) in such hour.

"**Form of Average Expected Energy Report**" has the meaning set forth in Section 4.3(a).

"**Form of Monthly Delivery Forecast**" has the meaning set forth in Section 4.3(b).

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

"**Gains**" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made under any

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

"**Generating Facility**" means the separately metered 100 MW portion of the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Generating Facility Energy to the Delivery Point, (ii) Charging Energy to the Storage Facility and (iii) Discharging Energy to the Delivery Point; provided, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Energy**" means all Energy produced by the Generating Facility, as measured by the Generating Facility Meter after adjustment to exclude (a) all Electrical Losses, and (b) all Energy that serves Station Use or is stored in the Storage Facility to serve Station Use.

"**Generating Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), 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 Generating Facility Energy generated by the Generating Facility for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**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.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents

the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

"**Green Tag Reporting Rights**" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"**Guaranteed Capacity**" means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B, Section 5.

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

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

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

"**Guaranteed Energy Production**" means an amount of Energy, as measured in MWh, equal to [redacted] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"**Guaranteed RA Amount**" means [redacted]

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.8(a).

"**Guarantor**" means, with respect to Seller, any Person that (a) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's or has a tangible net worth of at least [redacted] (d) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (e) 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 or in such other form as is reasonably agreed to by the Parties.

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

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1.

"**Indemnified Party**" has the meaning set forth in Section 16.1.

"**Indemnifying Party**" has the meaning set forth in Section 16.1.

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

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW at the Storage Facility Meter, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

"**Installed PV Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will (a) be interconnected with the Transmission System and (b) will have capacity rights equal or greater than the amount of the Guaranteed Capacity, and pursuant to which Seller's Interconnection Facilities and any other 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.

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

"**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 Code.

"**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 equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (iv) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or letters of credit in connection with the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"**Limited Assignee**" has the meaning set forth in Section 14.4.

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

"**Local Capacity Area Resource Adequacy Benefits**" means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity, expressed in kW.

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

"**Losses**" means, with respect to any 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 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 must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" has the meaning set forth in Section 4.7.

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

"**Minimum Efficiency Rate**" means the percentage specified on the Cover Sheet.

"**Monthly Delivery Forecast**" means the monthly forecast delivered by Seller pursuant to Section 4.3(b).

"**Monthly Storage Availability**" has the meaning set forth in Exhibit P.

"**Moody's**" means Moody's Investors Service, Inc.

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

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP in the 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 the 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(a).

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

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

"**Original Agreement**" has the meaning set forth in the Recitals.

"**Original Effective Date**" 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 Measurement Period**" means each two (2) consecutive Contract Year period during the Delivery Term.

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

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any 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 or Baa3 from Moody's; and

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

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

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

"**PNode**" has the meaning set forth in the CAISO Tariff.

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

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

"**Portfolio Content Category 2**" or "**PCC2**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

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

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

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

[redacted]

"**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 generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, 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 generating facilities with integrated storage 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.

"**PTC**" means the production tax credit established pursuant to Section 45 of the Code.

"**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 3.8(b).

"**RA Deficiency Amount Cap**" means the cap, expressed in $/kW-month, on the payment of RA Deficiency Amount liquidated damages applicable in a given month, as specified on the Cover Sheet.

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Shortfall Amount**" means the difference, expressed in kW, of (i) the Guaranteed RA Amount for a given month *minus* (ii) the System Resource Adequacy Benefits of the Storage Facility for such month able to be shown on Buyer's monthly or annual Supply Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits.

"**RA Shortfall Month**" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide System Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.8(b).

"**Real-Time Forecast**" means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

"**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.

"**Receiving Party**" has the meaning set forth in Section 18.2.

"**Recurring Certificate Transfers**" has the meaning set forth in Section 4.10(a).

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

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

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

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

"**Replacement Green Attributes**" has the meaning set forth in Exhibit G.

"**Replacement RA**" means Resource Adequacy Benefits equivalent to those that would have been provided by the Storage Facility with respect to the applicable RA Shortfall Month, including, if applicable for such month, Flexible Resource Adequacy Benefits associated with the Storage Facility.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Storage Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings (subject to the Operating Restrictions set forth in Exhibit Q), and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Storage 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, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**Resource ID**" has the meaning set forth in the CAISO Tariff.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" and "**Scheduling**" have a corollary meaning.

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

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator" of the CAISO Tariff, as amended from time to time. The Buyer or an agent of Buyer will be the Scheduling Coordinator for the Facility as set forth in the Cover Sheet.

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

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

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

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.10(a).

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

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

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

"**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, that are used in common with third parties.

"**Shared Facilities Agreements**" has the meaning set forth in Section 6.3.

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

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

"**Station Use**" means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility, including Energy associated with battery cooling and other thermal management equipment; and

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

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours (in MW) and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Storage Facility is able to provide as the Facility is configured on the

Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

"**Storage Capacity Test**" or "**SCT**" means any test or retest of the capacity of the Storage 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) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as may be adjusted pursuant to (i) Exhibit B, Section 5 or (ii) Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

"**Storage Facility**" means the 92 MW/368 MWh 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 Storage 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.

"**Storage Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), 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 Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Storage Facility Metering Points**" means the locations of the Storage Facility Meters at the Site.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

"**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 Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit O.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**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.

"**System Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits, expressed in kW.

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

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

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

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

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

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

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility 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 downstream from the Delivery Point.

"**Ultimate Parent**" means [redacted]

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

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.10(e).

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

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

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

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

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

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

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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) 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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, 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 three (3) years following the termination of this Agreement.

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

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity on the Commercial Operation Date, and (iii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Battery Capacity on the Commercial Operation Date;

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

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

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

(e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after commercial operation of the Generating Facility, expects to timely complete) all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Generating Facility, QRE service agreement applications, and other appropriate documentation required to effect Generating Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system;

(g) Seller has achieved Deliverability Status and provided documentation of same to Buyer;

(h) Seller has satisfied its requirements with the union labor requirements set forth in Section 13.4;

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

(j) Seller has paid Buyer or authorized Buyer to draw on the Development Security for all amounts owing under this Agreement, if any, including Construction Delay Damages and Commercial Operation 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 Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's Default, Seller shall submit to Buyer, within ten (10) Business Days of either the third such missed Milestone or the end of the ninety (90) day period for any single uncompleted Milestone, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Intentionally Omitted**.

2.6 **Intentionally Omitted**.

2.7 **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats; Signage**.

(a) If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit U. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to Buyer that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide Buyer with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

(A) 36-inch minimum height above ground of the lowest edge of the solar panels;

(B) Burying conduits and wiring with homeruns tight to bottom of panels;

(C) Designing inter-row access/spacing to enable vegetation management; and

(D) Utilizing 'BeeWhere' registration if beehives are placed onsite.

Additional pollinator reference materials can be found at Pollinator Partnership at www.pollinator.org and EPRI at https://www.epri.com/#/pages/sa/pollinators?lang=en-US, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

(b) Signage. Seller agrees to install and maintain permanent signage during the Delivery Term at the Site displaying Buyer's logo, Seller's logo, and the name of the Facility. The sign shall be located on property frontage with visibility to the most populous roadway, subject to any local ordinance restrictions. The sign shall be large enough to be visible from such roadway. The materials shall be environmentally friendly, such as aluminum composite or wood, and shall not be made of acrylic or similar materials. No lighting is required. Buyer shall provide a design file for the sign. Location and final specifications for signage, including design, are subject to Buyer's approval, not to be unreasonably withheld. Seller shall construct and maintain the sign at Seller's sole expense, and Seller shall be responsible for obtaining any required permits or approvals. The sign shall be installed within thirty (30) days of the Commercial Operation Date.

2.8 **CPUC Mid-Term Reliability Requirements**. Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental zero-emissions capacity pursuant to CPUC D.21-06-035, OP 6 and D.23-02-040. In accordance with such requirements, Seller represents that the Facility shall meet the following requirements, subject to the terms of this Agreement:

(a) The Facility shall emit zero-emissions;

(b) The Facility shall be comprised of a generation resource paired with storage; and

(c) The Facility shall be designed to be capable of delivering every day, year-round at least five (5) MWh of energy per every MW of claimed incremental capacity during the 5 p.m. to 10 p.m. period (the beginning of hour ending 1800 and the end of hour ending 2200), Pacific Time, provided that the daily plane-of-array irradiance is at least 5.2 kWh/m^2.

(d) In furtherance of Buyer's compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this

Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations, including but not limited to the following:

(i) Evidence of interconnection, site control, notice to proceed with construction, and other evidence of construction status and progress towards Commercial Operation;

(ii) Engineering assessments demonstrating that the Facility satisfies the foregoing requirements; and

(iii) Any other engineering assessments or contractual support required or requested by the CPUC pursuant to CPUC D.21-06-035 and D.23-02-040.

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, Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility, and Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, after title and risk of loss thereto has been transferred to Buyer, provided that no such re-sale or use shall relieve Buyer of any 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 in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event affecting Buyer's ability to receive the Product at the Delivery Point, or a Curtailment Order.

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

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Buyer.

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

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Original Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Original Effective Date. Subject to the final sentence of this Section 3.5(a) and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

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

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall remit to Seller all CAISO revenues arising from such Test Energy and associated Product (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall make all requests in the CAISO generator interconnection process necessary to achieve Deliverability Status. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Deliverability Status. Seller's obligations under this Section 3.7 are subject to the provisions of Section 3.11.

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

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain Deliverability Status for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Seller. On and after the RA Guarantee Date and thereafter throughout the Delivery Term, and subject to Section 3.11, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer from the Storage Facility.

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

3.8 **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 each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Subject to Section 3.11, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the [redacted]

(c) Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in an amount equal to all or a portion of the RA Shortfall Amount, provided that the 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 [redacted] before the applicable CPUC Showing Month for the purpose of monthly RA reporting.

(d) [redacted]

3.9 **CEC Certification and Verification**. Subject to Section 3.11, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, and subject to Section 3.11, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 **California Renewables Portfolio Standard**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6] As used in this Section 3.10(a), "certified by the CEC" means the Generating Facility has received CEC Certification and Verification.

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

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

3.11 **Change in Law**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and Capacity Attributes to meet various compliance requirements, and that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions from time to time to implement a change in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the Agreement to reflect any mandatory contractual language required by Governmental Authorities, including changes to the definition of Green Attributes and Capacity Attributes or as may be required pursuant to CPUC D.21-06-035; (ii) require submission of any reports, data, or other information required by Governmental Authorities; (iii) provide additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; (iv) satisfy new compliance requirements of Governmental Authorities; or (v) take any other actions that may be requested by Buyer to assure that the Generating Facility is an Eligible Renewable Energy Resource under the

California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Original Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at [redacted] (the "**Compliance Expenditure Cap**"), [redacted]

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller shall not be obligated to take any Compliance Actions described in such Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs and expenses that exceed the Compliance Expenditure Cap (such costs and expenses (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, Seller shall complete the Compliance Actions covered by such Accepted Compliance Costs as agreed upon by the Parties, provided that under no circumstances shall Seller be obligated to incur costs and expenses in excess of the Accepted Compliance Costs that have been agreed to be reimbursed by Buyer.

(f) [redacted]

[redacted]

3.12 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any unreimbursed expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Except as otherwise provided herein, Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed 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 the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges and penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Generating Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Generating Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Generating Facility.

4.2 **Title and Risk of Loss**.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

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) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Generating Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 ("**Form of Average Expected Energy Report**"), or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Generating Facility Energy for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Form of Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer or its Scheduling Coordinator with a non-binding forecast of the hourly expected Generating Facility Energy for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Generating Facility Energy. These Day-Ahead Forecasts shall be sent to the Scheduling Coordinator. If Seller fails to provide Buyer or its Scheduling Coordinator with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any real-time forecast or Buyer's best estimate based on information reasonably available to Buyer. For the avoidance of doubt, receipt by the Scheduling Coordinator of a Day-Ahead Forecast in the form of the CAISO VER Forecast or a Day-Ahead Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(c).

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify the Scheduling Coordinator of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Generating Facility Energy, in each case, 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 Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility Energy 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 or its Scheduling Coordinator as soon as reasonably possible. Such Real-Time Forecasts of Generating

Facility Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use best efforts to notify Buyer or its Scheduling Coordinator of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer or its Scheduling Coordinator of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer or its Scheduling Coordinator; provided that Buyer or its Scheduling Coordinator specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer or its Scheduling Coordinator fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer or its Scheduling Coordinator. For the avoidance of doubt, receipt by the Scheduling Coordinator of Real-Time Forecasts in the form of the CAISO VER Forecast or a Real-Time Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(d).

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the Scheduling Coordinator 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 Scheduling Coordinator 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.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not provide the notification required in Section 4.3(e) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy due to the failure of Seller to provide such notification, Seller shall be responsible for a Forecasting Penalty. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.11, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility and delivered to the Delivery Point, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate, in accordance with Exhibit C.

(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed to Buyer by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(d), 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 in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. 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. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.11.

4.5 **Charging Energy Management**.

(a) Upon receipt of a valid Charging Notice, but subject to Section 4.5(b), Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement.

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

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority or as provided in Section 4.4(a). If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage 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 Storage 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 Storage Product) associated with such discharge.

(d) During the Delivery Term, Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments 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 Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority, 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Procedures.

(f) [redacted]

[redacted]

(g) [redacted]

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Unless otherwise agreed, Seller shall provide Buyer with Notice of Planned Outages at least one hundred twenty (120) days prior, *provided*, that (i) no Notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than three percent (3%) of the Installed PV Capacity and three percent (3%) of the Installed Battery Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) Business Days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is reasonably acceptable to Buyer. 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. Subject to the foregoing, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility that does not conflict with the availability requirements required pursuant to CPUC D.21-06-035, OP 6; provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%) during daylight hours, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, (iv) the Parties agree otherwise in writing, or (v) such outage is required to perform a Storage Capacity Test or measurement of the Efficiency Rate, in each case, performed at Seller's request (any of the scheduled maintenance permitted by this Section 4.6(a), a "**Planned Outage**").

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

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

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

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

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, and Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability**.

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than [redacted] (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P).

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 retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Such representative(s) shall not interfere with the 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. Other than as may be agreed pursuant to Section 3.11, all other costs of any Storage Capacity Test shall be borne by Seller.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, 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 Capacity and/or Efficiency Rate, effective as of the first day of the month following the completion of the test, for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy purchased by Buyer hereunder are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.10(c), provided that Seller fulfills its obligations under Sections 4.10(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date or as soon as reasonably possible thereafter, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Recurring Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 notwithstanding that the WREGIS Certificates for such month may not have been formally transferred to Buyer in accordance with the WREGIS

Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, and remains uncured following the later of (i) thirty (30) days after Notice from Buyer thereof or (ii) ninety (90) days after the Deficient Month, then the amount of Generating Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period. If there is a shortfall of WREGIS Certificates caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.11, if WREGIS changes the WREGIS Operating Rules after the Original Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Original Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.11 **Station Use**. Seller will be responsible for procuring and paying for all necessary retail electricity required to operate the Facility. Energy generated and/or stored at the Facility may be used to provide Energy required for Station Use, provided that Seller reimburse or not invoice Buyer for any costs incurred by Buyer in connection with such Station Use and the associated Energy.

4.12 **Interconnection Capacity**. Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have and maintain interconnection capacity available or allocable to the Facility under the Interconnection Agreement that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under the Interconnection Agreement to interconnect the Facility with the CAISO Grid and to fulfill Seller's obligations under this Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer to dispatch the Facility in accordance with the CAISO Tariff and as contemplated under this Agreement (collectively, the "**Dedicated Interconnection Capacity**"). Buyer shall be entitled to all rights and benefits associated with the Dedicated Interconnection Capacity, including any associated deliverability rights. Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

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. 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. 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 or promptly upon request by Seller 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 Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Code.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with applicable 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 action to prevent such damage or injury. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Generating Facility Energy, Charging Energy, or Discharging Energy.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared**

Facilities Agreements") to be entered into among Seller, the Participating Transmission Owner, 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 Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity, (ii) continue to provide for separate metering and a separate Resource ID for each of the Generating Facility and the Storage Facility, and (iii) shall not allow any Affiliate of Seller or third party to use the Dedicated Interconnection Capacity if such use would have an adverse impact on Buyer's dispatch rights of the Facility. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs or losses from CAISO or under the Agreement resulting from a third party's use of the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meters, 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. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the requirements set forth in Exhibit T. 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 outside of normal testing, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility. Seller shall obtain and maintain a single CAISO Resource ID dedicated exclusively to the Generating Facility and a single CAISO Resource ID dedicated exclusively to the Storage Facility. Seller shall not obtain additional CAISO Resource IDs for the Generating Facility, the Storage Facility, or the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO Resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO Resource IDs incurred by Seller shall be reimbursed by Buyer.

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 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**. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments) and Seller shall make good faith efforts to deliver the first invoice to Buyer for the Product no later than ten (10) Business Days after the end of the calendar month in which the Commercial Operation Date occurs. Seller shall thereafter make good faith efforts to deliver an invoice to Buyer for Product no later than ten (10) Business Days after the end of the prior monthly delivery period. Each invoice shall reflect (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 Generating Facility Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy produced by the Generating Facility as read by the Storage Facility Meter, the amount of Discharging Energy delivered from the Storage Facility as read by the Storage Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the calculation of Generating Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) 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.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within twenty-five (25) days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month Secured Overnight Financing Rate (SOFR) rate (or a successor rate mutually agreed to by the Parties) published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted 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; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. 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**. The Parties hereby agree that they 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 and Deemed Delivered Energy during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G 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 delivered the Development Security to Buyer within thirty (30) days of the Original Effective Date. Seller shall maintain the Development Security in full force and effec [redacted] Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty

(60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Development Security or change the form of Development Security to another form of Development Security from time to time upon reasonable prior written notice to Buyer.

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 shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) 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 not allocated to invoiced but unpaid amounts pursuant to this Section 8.8. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

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

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or 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 email or other electronic means), at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided on Exhibit N.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, except as set forth below, so long as an event otherwise satisfies the definition of a Force Majeure Event, a Force Majeure

Event may include an act of God or the elements, including flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party.

(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, or any component thereof at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under the 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 except to the extent such event 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 Generating Facility or the Storage Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) 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 promptly 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 the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties' performance hereunder may not be immediately or readily

ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 once any impacts of COVID-19 result in any delay or nonperformance hereunder.

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; provided, however, that Seller shall be entitled to up to an additional six (6) additional months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12) month period despite exercising diligent efforts and (b) Seller provides to Buyer prior to the expiration of the original twelve (12) month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section 10.4(b)(i), (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month, and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer, or in otherwise resolving the Force Majeure Event. 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 thirty (30) 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 achieve Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.8, (2) failures related

to the Adjusted Energy Production that do not trigger the provisions of Sections 11.1(b)(v), 11.1(b)(vii) and 11.1(b)(viii), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(vi), the exclusive remedies for which are set forth in Section 4.8) 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) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility;

(ii) the failure by Seller to achieve Commercial Operation [redacted] of the Guaranteed Commercial Operation Date;

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

(iv) the failure by Seller to achieve the Construction Start Date [redacted] of the Guaranteed Construction Start Date;

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period based on the most recent Average Expected Energy Report provided by Seller, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum, or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(vi) if, in any two (2) consecutive Contract Years during the Delivery Term, the average Monthly Storage Availability is, in each Contract Year, [redacted]

(vii) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in any Contract Year;

(viii) if, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least [redacted] of the Expected Energy amount in each Contract Year;

(ix) if, Seller fails to maintain an average Efficiency Rate of at least [redacted] over a rolling 18-month period;

(x) if, Seller fails to maintain a Storage Capacity equal to at least [redacted] of the Storage Contract Capacity for more than three hundred sixty (360) days;

provided that, with respect to Sections 11.1(b)(v)-(x), there shall be no Event of Default by Seller if the reason that the Monthly Storage Availability, Adjusted Energy Production, Efficiency Rate or Storage Capacity was not at least equal to the percentages set forth in Sections 11.1(b)(v)-(x) is due to (x) major equipment failure that cannot be reasonably replaced and appropriately permitted within six (6) months, so long as such failure was not due to the negligence of Seller and Seller has taken reasonable actions necessary to cure such major equipment failure (including, but not limited to, placing an order for replacement equipment) or (y) a Force Majeure Event;

(xi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein;

(xii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer (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

(xiii) 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 (1) cash, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within fifteen (15) 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 forty-five (45) days prior to the expiration of the outstanding Letter of Credit.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) or 11.1(b)(iv)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party (as of the Early Termination Date) minus any and all other amounts due 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. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. 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 a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting

Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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

[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. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED

TO DIRECT DAMAGES ONLY. ON AND BEFORE THE SIXTH ANNIVERSARY OF THE COMMERCIAL OPERATION DATE, THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, 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 Original 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) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller or an Affiliate will be the applicant on any CEQA documents.

(g) 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 Original 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, 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 and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in

California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. 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, through its contractors, is required to enter into project labor agreements with participating unions of similar scope and requirements as set forth under the terms of that certain Letter Agreement between Buyer and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the "**PLA**"). The PLA applies to "Covered Work" (as defined therein) for solar photovoltaic and associated energy storage projects for which Buyer is the power supply offtaker. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. In addition, Seller shall undertake the community benefit activities set forth in Exhibit R.

13.5 **Diversity Reporting**. Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit S, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

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. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, 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 financing or refinancing of the Facility by Seller, 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. 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; and

(i) The Parties shall negotiate any Collateral Assignment Agreement in good faith, including variations to the provisions set forth in this Section 14.2, and to the extent the Collateral Assignment Agreement executed by Buyer and Lender varies from such provisions, the terms of such Collateral Assignment Agreement shall be controlling. In addition, Buyer shall

cooperate with Seller or any Lender to execute or arrange for delivery of estoppels reasonably requested by Seller or Lender.

14.3 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, (x) to an Affiliate of Seller or (y) [redacted]

[redacted]

[redacted]

14.4 **Buyer Limited Assignment**. Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("**Limited Assignee**") that has or provides a parent guaranty, in form and substance reasonably acceptable to Seller, from an entity that has creditworthiness equal to or better than the creditworthiness of Buyer (measured as of the Original Effective Date) of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit V, with the blanks in such form completed in Buyer's sole discretion. Provided that Buyer

delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein. Limited Assignee and Buyer shall comply with all reasonable requests received by any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

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. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If

the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification**. Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws, (ii) negligent or tortious acts, errors, or omissions or (iii) intentional acts or willful misconduct in each case by or of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents, excepting only such claims, demands, losses, liabilities, penalties and expenses to the extent solely caused by the willful misconduct or gross negligence of a member of the Indemnified Party (collectively, "**Indemnifiable Losses**").

16.2 **Claim Notice**.

(a) **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 provide Notice to 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 the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 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, the Indemnifying Party is not obligated to indemnify the Indemnified Party 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.

16.3 **Defense of Claims**. If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from such Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense,

and the 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 the Indemnified Party, the 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **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 products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

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

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One

Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Generating Facility prior to the Commercial Operation Date, construction 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 Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Contractor Insurance. Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. The contractor shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). The contractor 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. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least ten (10) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted. The Parties agree to work in good faith to agree on the scope of such redactions and Buyer's public disclosure of this Agreement, redacted as agreed between the Parties, shall be in accordance with the requirements of Law and this Article 18.

18.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Limited Assignee, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have consented upon the contents of any such public statement. A Party's consent shall not be

unreasonably withheld, conditioned or delayed.

ARTICLE 19
MISCELLANEOUS

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

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

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

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

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

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further,

absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

19.10 **No Recourse 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 **Forward Contract**. The Parties acknowledge and agree 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.

19.12 **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.

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

GOLDEN FIELDS SOLAR IV, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

MARIN CLEAN ENERGY, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Rosamond South Project

Site includes all or some of the following APNs: See attached Schedule 1. This Agreement is specific to the Site and Seller may change the location of the Site only upon Buyer's prior written consent, which consent is in Buyer's sole discretion. Seller shall maintain Site Control throughout the Contract Term and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

County: Kern County

CEQA Lead Agency: Kern County

Type of Generating Facility: Solar photovoltaic electricity generating facility

Type of Storage Facility: A lithium-ion battery energy storage system which is capable of receiving Charging Energy from the Generating Facility and in the form of grid energy; provided, that the Storage Facility shall not receive Charging Energy from any source other than the Generating Facility without the prior written agreement of both Parties, which will not be unreasonably withheld, conditioned or delayed.

Guaranteed Capacity: See definition in Section 1.1.

Storage Contract Capacity: See definition in Section 1.1.

Maximum Facility Output: 100 MW

Maximum Charging Capacity: 92 MW

Maximum Discharging Capacity: 92 MW

Maximum Storage Level: 368 MWh

Operating Restrictions of Storage Facility: See Exhibit Q

Interconnection Point: SCE Whirlwind 230 kV

Delivery Point: the Facility Pnode on the CAISO Grid.

PNode: The PNode designated by CAISO for each of the Generating Facility and Storage Facility at the Whirlwind 230 kV substation.

Participating Transmission Owner: Southern California Edison

Schedule 1

List of APNs

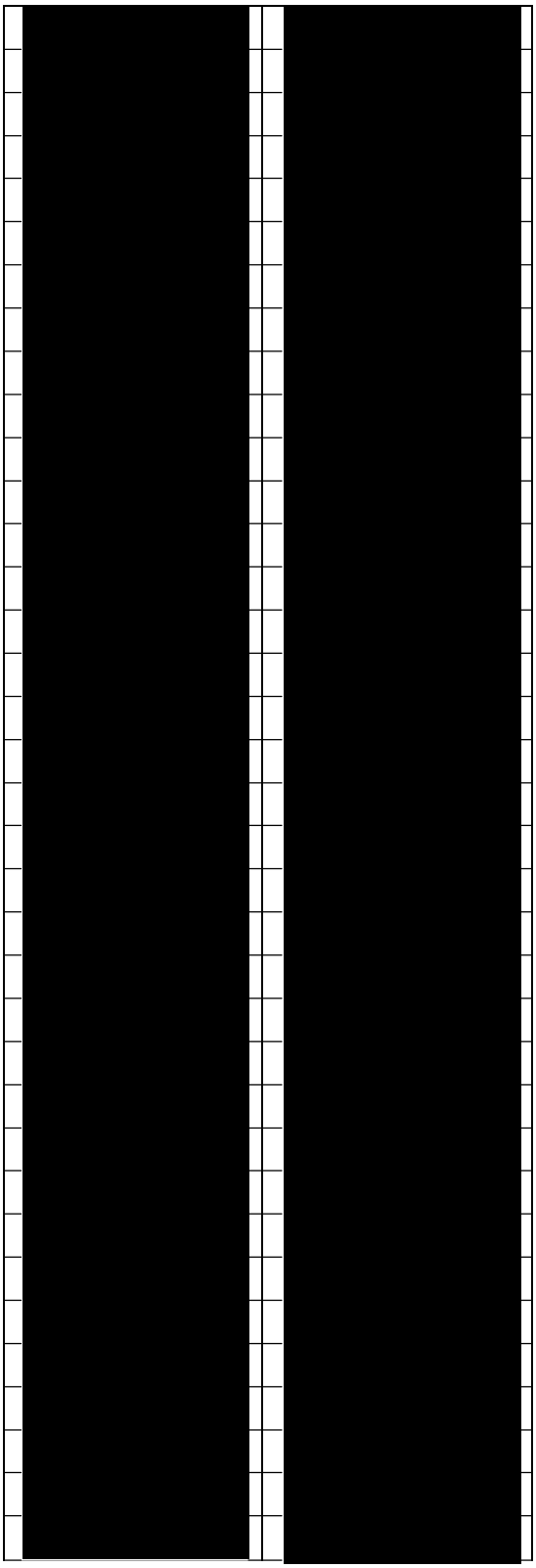


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. "**Construction Start**" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a 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**." The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2 b. of this Exhibit B. The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Construction Start Date on or before the Guaranteed 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)(ii) or 11.1(b)(iv) 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 (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The "**Commercial Operation Date**" shall be the later of (x) [redacted], or (y) the date on which Commercial Operation is achieved.

a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least [redacted]

b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of such Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. [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 receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation [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, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:

a. a Force Majeure Event occurs, including a Force Majeure Event that delays Seller from acquiring all material permits, consents, licenses, approvals or authorizations from any Governmental Authority required for Seller to own, construction, interconnect, operate or maintain the Facility; or

b. [redacted]

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a) and 4(b) of this Exhibit B under the Development Cure Period shall not exceed [redacted], for any reason, including a Force Majeure Event. Notwithstanding the foregoing, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than [redacted] after Seller became aware of an actual delay affecting the Facility, except that in the case of a delay occurring within [redacted] of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay. As used in the preceding sentence, "actual delay" does not include Seller's receipt of generic notices of potential delays. Upon request from Buyer, Seller shall promptly provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity**.

a. *Guaranteed Capacity*. If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [redacted] after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

b. *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 install additional capacity or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 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] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, up to [redacted].

(b) Excess Contract Year Deliveries Over [redacted] If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [redacted] of the Expected Energy for such Contract Year, the price to be paid for additional Generating Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) [redacted]

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be Zero Dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Generating Facility Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap in accordance with paragraphs (a) and (b) of this Exhibit C.

(e) Storage Rate. All Storage Product shall be paid on a monthly basis in an amount equal to (i) [redacted]

[redacted]

(f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during 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 by [redacted]

(g) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(h) Tax Credits. The Parties agree that neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as provided in Section 12.1, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term. As of the Effective Date, Seller assumes the Facility qualifies for an ITC at an "energy percentage" of [redacted] To the extent the Facility qualifies for an ITC at an "energy percentage" of greater than [redacted] Seller shall use commercially reasonable efforts to monetize such increased amount and, if successful, shall attribute [redacted] of the net impact to the development margin realized by Seller's parent company to Buyer (provided further that Seller shall not be obligated to refinance the Project in order to obtain such benefit). Seller shall provide Buyer with reasonably detailed written documentation of how such amounts were calculated and provide an officer's certificate attesting to the accuracy of the amounts presented. To the extent Seller is successful in monetizing such excess amount, the Parties shall work in good faith to amend this Agreement or enter into such other agreements to effectuate the foregoing.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer (or its designated qualified third party) shall be the Scheduling Coordinator and provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test 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. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date.

(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 (as the Facility's SC) 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 the personnel designated to receive such information for Buyer (as the Facility's SC) and the CAISO (i) telephonically for real-time outages (i.e., outages that occur after the CAISO Day-Ahead Market has closed for the operating day) and (ii) by electronic mail for all other outages, notices and updates.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties imposed on Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the

CAISO Tariff) are for the benefit of the Seller and for Seller's account and that 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 are caused by Buyer's (as Scheduling Coordinator) failure to perform its must-offer requirements under Section 40.6 of the CAISO Tariff or caused by Buyer's other actions (as Scheduling Coordinator) in which case such Non-Availability Charges shall be the responsibility of Buyer and for Buyer's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder), outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay 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 shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. Buyer agrees to pay costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes, except to the extent they relate to CAISO charges payable by Seller under this Agreement with respect to the Facility.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(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.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

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 performance projections for the next twelve (12) months.

11. Prevailing wage reports as required by Law.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

FORM OF MONTHLY DELIVERY FORECAST

	Day																													
HE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
1																														
2																														
3																														
4																														
5																														
6																														
7																														
8																														
9																														
10																														
11																														
12																														
13																														
14																														
15																														
16																														
17																														
18																														
19																														
20																														
21																														
22																														
23																														
24																														

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Contract Year, in $/MWh, which is the sum of (a) the weighted average of the Integrated Forward Market hourly price for all the Reference Hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point weighted by hourly and monthly volumes in the most recently delivered Average Expected Energy Report, plus (b) the lesser of (x) $50.00/MWh and (y) the market value of Replacement Green Attributes, as reasonably determined by Buyer.

D = the Renewable Rate

"**Adjusted Energy Production**" shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.

"**Lost Output**" has the meaning given in Section 4.7 of the Agreement.

"**Reference Hour**" means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 7:00 AM to 9:59 PM) on Monday through Sunday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Generating Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. Buyer will send Seller Notice of the amount of damages owing, if any, which amount shall be payable to Buyer within thirty (30) days from the date of such Notice.

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 Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Golden Fields Solar IV, LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than [redacted] of the Guaranteed Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.

4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

5. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than [redacted] of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

6. The Storage 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.

7. The Facility is designed to be capable of delivering every day, year-round at least [redacted] MWh of energy per every MW of claimed incremental capacity during the 5 p.m. to 10 p.m. period (the beginning of hour ending 1800 and the end of hour ending 2200), Pacific Time, provided that the daily plane-of-array irradiance is at least [redacted].

8. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on [Date].

9. If applicable, the Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [Date].

10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I-1

FORM OF INSTALLED PV CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed PV 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 Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between Golden Fields Solar IV, LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Generating Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed PV Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Printed Name: _____

Title: _____

EXHIBIT I-2

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Battery 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 Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between Golden Fields Solar IV, LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW AC 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 Golden Fields Solar IV, LLC, a Delaware limited liability company ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

2. the precise Site on which the Facility is located is, which must include some or all of the previously identified APNs (such description shall amend the description of the Site in Exhibit A): _____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this _____ day of _____, 20__.

GOLDEN FIELDS SOLAR IV, LLC
a Delaware limited liability company,

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]
Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Director of Finance

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 Renewable Power Purchase Agreement dated as of [Date of Contract / Agreement should be in the past or on the date of issuance. In case of future contract date the Letter of Credit text will be adjusted to reflect this change] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] 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 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, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [email to [*bank email address*]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt)

with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

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 documents presented under and in compliance with the terms of this Letter of Credit 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 registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by email to Finance@mcecleanenergy.org and followed up by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Attn: Chief Financial Officer, 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: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Amended and Restated Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) 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 forty-five (45) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Marin Clean Energy, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Marin Clean Energy, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [_____] (the "**Effective Date**") by and between [_____], a [_____] ("**Guarantor**"), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

Recitals

A. Buyer and Golden Fields Solar IV, LLC, a Delaware limited liability company ("**Seller**"), entered into that certain Amended and Restated Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

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

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "**Guaranteed Amount**"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars ($_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty

and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the 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), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, 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 PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Paragraph 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 Paragraph 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 City and County of San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or

unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[*Signature on next page*]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by Golden Fields Solar IV, LLC, a Delaware limited liability company ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Amended and Restated Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. 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 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

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		

[1] To be repeated for each unit if more than one.

GOLDEN FIELDS SOLAR IV, LLC
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

Golden Fields Solar IV, LLC ("Seller")	**Marin Clean Energy** ("Buyer")
All Notices: Street: 4900 Scottsdale Road, Suite 5000 c/o Solar Asset Management LLC City: Scottsdale, AZ 85251 Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com With a copy to: Street: 5790 Fleet Street, Suite 200 City: Carlsbad, CA 92008 Attn: General Counsel Phone: 760-710-2187 Email: jennifer.hein@clearwayenergy.com	**All Notices:** Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mceecleanenergy.org
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**Invoices:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mceecleanenergy.org
Scheduling: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**Scheduling:** Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**Confirmations:** Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mceecleanenergy.org
Payments: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**Payments:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mceecleanenergy.org
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]

Golden Fields Solar IV, LLC ("Seller")	**Marin Clean Energy** ("Buyer")
With additional Notices of an Event of Default to: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**With additional Notices of an Event of Default to:** Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: VP Asset Management Phone: 480-424-1240 Email: Monique.menconi@clearwayenergy.com	**Emergency Contact:** Attn: Phone: E-mail:

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 Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, 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 retest of the Storage Capacity Test at any time upon no less than five (5) 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 five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall have the right to schedule and complete a Storage Capacity Test. In addition, Seller shall have the right to schedule and complete a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Buyer if Seller provides data with such Notice reasonably indicating that the Storage Capacity or Efficiency Rate has varied materially from the results of the most recent Storage Capacity Test.

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate.

In accordance with Section 4.9(c) of the Agreement, Part II.J, and Part II.K. below, the actual storage capacity and efficiency rate determined pursuant to the most recent Storage Capacity Test (up to, but not in excess of, the Storage Contract Capacity) shall become the new Storage Capacity and Efficiency Rate, effective as of the first day of the month following the completion of the test, for calculating the monthly payment for the Storage Product 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 and the provisions of this Exhibit O. 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).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS AND EFFICIENCY TESTS.

A. Purpose of Test. Each SCT shall:

(1) Determine an updated Storage Capacity;

(2) Determine the amount of Energy required to fully charge the Storage Facility;

(3) Determine the Storage Facility charge ramp rate;

(4) Determine the Storage Facility discharge ramp rate; and

(5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Generating Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity; and
- Amount of energy required to go from Minimum Storage Level to the Maximum Storage Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

(1) Time;

(2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);

(3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and

(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) near the horizontal centerline of the Storage Facility; and

(3) Ambient air temperature (°F).

E. Test Showing. Each SCT must demonstrate that the Storage Facility:

(1) successfully started;

(2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity (as defined in Exhibit A);

(3) operated for at least four (4) consecutive hours at Maximum Charging Capacity (as defined in Exhibit A);

(4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Storage Level (as defined in Exhibit A); and

(5) is able to deliver Discharging Energy as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

F. Test Conditions.

(i) General. At all times during a SCT, the Storage 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 (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), 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.

G. 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.

H. 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.B through D, including copies of the raw data taken during the test;

(3) the level of Storage 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.

I. 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.

J. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Storage Facility Meter (expressed in MWh AC) during each of the first four (4) hours of discharge (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) 4 hours) shall be divided by four (4) hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.9(c) of the Agreement.

K. Adjustment to Efficiency Rate. The total amount of Energy Out divided by the total amount of Energy In, measured at the Storage Facility Meter, and expressed as a percentage, shall be the new Efficiency Rate in accordance with Section 4.9(c) of the Agreement.

L. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Storage Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity and Efficiency Rate through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity and Efficiency Rate for all purposes of this Agreement, including compensation under Exhibit C.

PART III - INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. **Initial Supplementary Storage Capacity Test Protocol**

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

- Procedure:

(1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Storage Level.

(2) Record the initial value of the Storage Facility State-of-Charge ("**SOC**").

(3) Charge the Storage Facility at the maximum charging level until the battery reaches the maximum SOC allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging (unless there is insufficient Energy generation from the Generating Facility to charge the Storage Facility, in which case, such six hour limitation shall not be applicable).

(4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter ("**Energy In**"). All separately metered Storage Facility Station Use and Electrical Losses to the Delivery Point shall be excluded from the measurement of Energy In.

(5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Storage Level, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

(6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.

(7) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Efficiency Rate.

(8) If the Storage Facility has not reached the Minimum Storage Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Storage Level.

(9) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. "**Energy Out**" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Storage Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use and Electrical Losses to the Delivery Point shall be excluded from the measurement of Energy Out.

- Test Results

(1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.

(2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

STORAGE AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{\text{MNTHHRS}_m}$$

where:

m = relevant month "m" in which availability is calculated;

MNTHHRS_m is the total number of On-Peak Hours for the month;

UNAVAILHRS_m, is the total number of On-Peak Hours in the month during which the Storage Facility was unavailable to deliver Storage Product (as such unavailability is pro rated for any Storage Contract Capacity that is available to deliver Storage Product at any given time) for any reason other than the occurrence of any of the following (each, an "**Excused Event**"): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, System Emergencies, limitations contained in the Operating Restrictions set forth in Exhibit Q, a Storage Capacity Test or measurement of the Efficiency Rate, in each case, performed at Buyer's request, or a Planned Outage of the Storage Facility not to exceed [redacted] To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AA = 100%

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to [redacted] then:

[redacted]

(iii) If the Monthly Storage Availability is less than [redacted] then:

[redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

Maximum Storage Level:	368 MWh
Minimum Storage Level:	0 MWh
Maximum Charging Capacity:	92 MW
Minimum Charging Capacity:	0.01 MW
Maximum Discharging Capacity:	92 MW
Minimum Discharging Capacity:	0.01 MW
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	[redacted]
Annual Cycles:	Maximum of 365 Full Cycle Equivalents per Contract Year with no monthly cap.
Daily Dispatch Limits:	Charging: 2 per day Discharging: 2 per day Partial Charging/Discharging: No limits beyond the operational conditions specified.
Maximum Time at Minimum Storage Level (after Discharging to Minimum State of Charge):	[redacted]
Other Operating Limits:	1. Storage Facility to be charged only from the Generating Facility prior to the Commercial Operation Date. 2. Storage Facility may be charged with Energy from the CAISO Grid after the Commercial Operation Date pursuant to the terms of Section 4.5(f). 3. All manual dispatch commands by the Buyer or Buyer's SC must use the supplied energy management system.

	[redacted]

Seller and Buyer agree that Charging Notices and Discharging Notices shall be deemed modified to the extent necessary to comply with the Operating Restrictions.

The following capitalized terms have the meanings ascribed to them below in this Exhibit Q:

"**Full Cycle**" means a quantity of Discharging Energy (in MWh) has been discharged from the Storage Facility equal to the Storage Contract Output.

"**Full Cycle Equivalent**" means either (a) a Full Cycle or (b) the sum of more than one Partial Cycles that equal the Discharging Energy in one Full Cycle.

"**Partial Cycle**" means a quantity of Discharging Energy (in MWh) has been discharged from the Storage Facility that is less than one hundred percent (100%) of the Storage Contract Output.

EXHIBIT R

COMMUNITY BENEFIT

Buyer is a not-for-profit public agency whose core mission includes local investment in the communities that it serves. Seller pledges to contribute [redacted] to various community benefit initiatives that directly benefit stakeholders in Buyer's service territory. Seller agrees to make this payment of [redacted] after the Commercial Operation Date. Such funds will be utilized for community benefit initiatives only, which may include programs focused on housing, education, workforce training, and environmental stewardship/habitat improvement. Seller will consult with Buyer to identify community benefit initiatives that are of mutual interest.

EXHIBIT S

DIVERSITY REPORTING

MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

* Required

1. Email address *

_____

2. Business Name *

_____

3. Where is your business located/headquartered? *

_____

4. Is your business certified under General Order 156 (GO 156)? *

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ Qualified as WMDVLGBTBEs but not GO 156 Certified

5. If you answered "yes" or "qualified but not certified", under which categories? Please choose all that apply. *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- [ ] Woman owned
- [ ] Minority Owned
- [ ] Disabled Vet Owned
- [ ] LGBT owned
- [ ] Other 8(a) (found to be disadvantaged by the US Small Business Administration)

6. If a minority-owned business enterprise, certified or qualified as which of the following? *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- [ ] African American
- [ ] Asian American
- [ ] Hispanic American
- [ ] Native American

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ◯ Under $1 million
- ◯ Under $5 million
- ◯ Under $10 million
- ◯ Above $10 million

8. If certified, current annual revenue:

Mark only one oval.

- ◯ Under $1 million
- ◯ Under $5 million
- ◯ Under $10 million
- ◯ Above $10 million

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here: https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp

Check all that apply.

- [ ] 1 Agricultural production- crops
- [ ] 2 Agricultural production- livestock
- [ ] 7 Agricultural services
- [ ] 8 Forestry
- [ ] 9 Fishing, hunting, and trapping
- [ ] 10 Metal mining
- [ ] 12 Coal mining
- [ ] 13 Oil and gas extraction
- [ ] 14 Nonmetallic minerals, except fuels
- [ ] 15 General building contractors
- [ ] 16 Heavy construction contractors
- [ ] 17 Special trade contractors
- [ ] 20 Food and kindred products
- [ ] 21 Tobacco manufactures
- [ ] 22 Textile mill products
- [ ] 23 Apparel and other textile products
- [ ] 24 Lumber and wood products
- [ ] 25 Furniture and fixtures
- [ ] 26 Paper and allied products
- [ ] 27 Printing and publishing
- [ ] 28 Chemicals and allied products
- [ ] 29 Petroleum and coal products
- [ ] 30 Rubber and miscellaneous plastics products
- [ ] 31 Leather and leather products
- [ ] 32 Stone, clay, glass, and concrete products
- [ ] 33 Primary metal industries
- [ ] 34 Fabricated metal products
- [ ] 35 Industrial machinery and equipment
- [ ] 36 Electrical and electronic equipment
- [ ] 37 Transportation equipment
- [ ] 38 Instruments and related products
- [ ] 39 Miscellaneous manufacturing industries
- [ ] 41 Local and interurban passenger transit

- [ ] 42 Motor freight transportation and warehousing
- [ ] 43 U.S. Postal Service
- [ ] 44 Water transportation
- [ ] 45 Transportation by air
- [ ] 46 Pipelines, except natural gas
- [ ] 47 Transportation services
- [ ] 48 Communications
- [ ] 49 Electric, gas, and sanitary services
- [ ] 50 Wholesale trade--durable goods
- [ ] 51 Wholesale trade--nondurable goods
- [ ] 52 Building materials, hardware, garden supply, & mobile home
- [ ] 53 General merchandise stores
- [ ] 54 Food stores
- [ ] 55 Automotive dealers and gasoline service stations
- [ ] 56 Apparel and accessory stores
- [ ] 57 Furniture, home furnishings and equipment stores
- [ ] 58 Eating and drinking places
- [ ] 59 Miscellaneous retail
- [ ] 60 Depository institutions
- [ ] 61 Nondepository credit institutions
- [ ] 62 Security, commodity brokers, and services
- [ ] 63 Insurance carriers
- [ ] 64 Insurance agents, brokers, and service
- [ ] 65 Real estate
- [ ] 67 Holding and other investment offices
- [ ] 70 Hotels, rooming houses, camps, and other lodging places
- [ ] 72 Personal services
- [ ] 73 Business services
- [ ] 75 Automotive repair, services, and parking
- [ ] 76 Miscellaneous repair services
- [ ] 78 Motion pictures
- [ ] 79 Amusement and recreational services
- [ ] 80 Health services
- [ ] 81 Legal services
- [ ] 82 Educational services
- [ ] 83 Social services
- [ ] 84 Museums, art galleries, botanical & zoological gardens
- [ ] 86 Membership organizations
- [ ] 87 Engineering and management services

- [ ] 88 Private households
- [ ] 89 Miscellaneous services
- [ ] 91 Executive, legislative, and general government
- [ ] 92 Justice, public order, and safety
- [ ] 93 Finance, taxation, and monetary policy
- [ ] 94 Administration of human resources
- [ ] 95 Environmental quality and housing
- [ ] 96 Administration of economic programs
- [ ] 97 National security and international affairs

10. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

Subcontractors

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? *

Mark only one oval.

- ◯ Yes
- ◯ No
- ◯ Not applicable

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. ; $100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Labor Agreements

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? *

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

Check all that apply.

- [ ] Yes, local labor in this recent contract with MCE
- [ ] Yes, union labor in this recent contract with MCE
- [ ] Yes, multi-tride PLA in this recent contract with MCE
- [ ] Yes, history of local hire but not in this contract with MCE
- [ ] Yes, history of union labor but not in this contract with MCE
- [ ] Yes, history of multi-trade PLA but not in this contract with MCE
- [ ] Uses California-based labor, but not local to MCE service area
- [ ] None of the above
- [ ] Not applicable

15. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

_____

16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

_____

_____

_____

_____

_____

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

18. Does your business pay workers prevailing wage rates or the equivalent? *

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html

Mark only one oval.

- ◯ Yes, including for this contract with MCE
- ◯ Yes, but not for this contract with MCE
- ◯ No
- ◯ Not applicable

19. Does your business support and/or use apprenticeship programs? *

Mark only one oval.

- ◯ Yes, including in this contract with MCE
- ◯ Yes, but not in this contract with MCE
- ◯ No
- ◯ Not applicable

20. If yes, please describe the apprenticeship programs supported/used.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

Equity, Diversity, Inclusion, and Justice	MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

22. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below.

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.

EXHIBIT T

METERING

Seller may add meters or move meters to different locations based on final design of the Facility so long as the Storage Facility is AC coupled, the metering provisions of this Agreement and the Interconnection Agreement can be complied with, such changes are consistent with the requirements of the CAISO Tariff, including the ability of the Facility to maintain a separate CAISO Resource IDs for the Generating Facility and the Storage Facility, and such metering changes do not affect the measurement or calculation of Generating Facility Energy, Facility Energy, Charging Energy, Discharging Energy, Electrical Losses and Station Use as required under this Agreement. Subject to the foregoing requirements, any such changes shall not be deemed to be inconsistent with this Exhibit T.

EXHIBIT U

POLLINATOR SCORECARD

Northern California / Oregon
Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.

1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points
- ☐ 46-60 % +10 points
- ☐ 61+ % +15 points

Total points ☐

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points
- ☐ 51-75%. +10 points
- ☐ 76-100% +15 points

Total points ☐

3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points
- ☐ 12-15 species +10 points
- ☐ 16 or more species +15 points

Total points ☐

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points
- ☐ Summer (June-August) +5 points
- ☐ Fall (September-November) +5 points
- ☐ Winter (December-February) +5 points

Total points ☐

Note: Check local resources for data on bloom seasons

5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points
- ☐ Native trees/shrubs +2 points
- ☐ Clean, perennial water sources +2 points
- ☐ Created nesting feature(s) (i.e., native bee houses) +2 points

Total points ☐

6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. + 15 points
- ☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points ☐

7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points
- ☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points
- ☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points ☐

8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points
- ☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points
- ☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points ☐

9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total ☐

Provides Exceptional Habitat	**>85**
Meets Pollinator Standards	**70-84**

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

POLLINATOR PARTNERSHIP

Fresh Energy

EXHIBIT V

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Assignment Agreement**" or "**Agreement**") is entered into as of [_____] by and among Golden Fields Solar IV, LLC, a Delaware limited liability company ("**PPA Seller**"), Marin Clean Energy, a California joint powers authority ("**PPA Buyer**"), and [Limited Assignee], a [_____] ("**Limited Assignee**"), and relates to that certain Amended and Restated Renewable Power Purchase Agreement (the "**PPA**") between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Limited Assignee (the "**Parties**" hereto; each is a "**Party**") agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the "**Assigned Products**") during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the "Further Information" section on Appendix 1 (the "**Assigned Product Rights**"). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Limited Assignee the obligation to pay for all Assigned Products that are actually delivered to Limited Assignee pursuant to the Assigned Product Rights during the Assignment Period (the "**Delivered Product Payment Obligation**" and together with the Assigned Product Rights, collectively the "**Assigned Rights and Obligations**"); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that (A) PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to Limited Assignee consistent with Section 1(d) hereof), and (B) Limited Assignee and PPA Buyer's respective payments during the Assignment Period shall be administered by a custodian who will transfer to PPA Seller on each payment due date the amounts paid by Limited Assignee and PPA Buyer with respect to each invoice (and it is anticipated that the custodian will consolidate the amounts received from Limited Assignee and PPA Buyer and make a single wire transfer to PPA Seller with respect to each invoice). To the extent Limited Assignee fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA (without regard to any additional cure period provided in Section 11.1(a)(i) of the PPA), notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment and that it will be an Event of Default pursuant to Section 11.1(a)(i) if PPA Buyer does not make

such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller. Notwithstanding the administration of payment obligations by a custodian, PPA Buyer and Limited Assignee shall be liable for their respective payment obligations in accordance with the terms and conditions of the PPA and this Agreement, including for any failure to receive payment from such custodian by the applicable payment due date.

(c) Limited Assignee hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller in accordance with the PPA; (ii) PPA Buyer is hereby authorized by Limited Assignee to and shall act as Limited Assignee's agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Limited Assignee of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default, contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iv) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of annual forecasts and monthly forecasts of Generating Facility Energy provided pursuant to Sections 4.3(a) and (b) of the PPA; (v) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4 of the PPA, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to Limited Assignee; and (vi) PPA Buyer and PPA Seller, as applicable, will provide copies to Limited Assignee of any other information reasonably requested by Limited Assignee relating to Assigned Products.

(e) PPA Seller acknowledges that (i) Limited Assignee intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Limited Assignee has the right to purchase from such intermediaries' receivables due from PPA Buyer for any such Assigned Products. To the extent Limited Assignee purchases from such intermediaries any such receivables due from PPA Buyer, Limited Assignee may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

(f) Notwithstanding any other provision of this Agreement, PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs. Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller

under the PPA with respect to CAISO revenues and costs. As used in this clause (f), the following terms have the meanings specified below.

"**CAISO**" means California Independent System Operator or its successor.

"**CAISO Tariff**" means CAISO's Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

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

"**Scheduling Coordinator**" 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.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day (as defined in the PPA) following receipt by Limited Assignee of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to Limited Assignee (or any entity providing a parent guaranty on behalf of Limited Assignee); or

(4) delivery of a written notice by Limited Assignee if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to Limited Assignee that (a) the PPA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period start date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Limited Assignee of any updates to such notice information. Notices to Limited Assignee shall be provided to the following address, as such address may be updated by Limited Assignee from time to time by notice to the other Parties:

[Limited Assignee]

5. Miscellaneous. Article 12 (Limitation of Liability and Exclusion of Warranties), Sections 13.2(e) and (f) (Buyer's Representations and Warranties), Article 18 (Confidential Information), Sections 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.5 (Severability), 19.6 (Mobile-Sierra), 19.7 (Counterparts), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. U.S. Resolution Stay Provisions. The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) Limited Assignee shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

7. Governing Law, Jurisdiction, Waiver of Jury Trial.

(a) Governing Law. This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) Jurisdiction. Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco.

(c) Waiver of Right to Trial by Jury. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

GOLDEN FIELDS SOLAR IV, LLC

By: ……..
Name:
Title:

MARIN CLEAN ENERGY

By: …….
Name:
Title:

[LIMITED ASSIGNEE]

By: ……
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: …….
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Amended and Restated Renewable Power Purchase Agreement, dated [_____], by and between Marin Clean Energy and Golden Fields Solar IV, LLC, a Delaware limited liability company.

"**Assignment Period**" means the period beginning on [_____] and extending until [_____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA. [*The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA.*]

Assigned Product: [Describe and define]

Further Information: [Include, if any] [*To include transfer and settlement mechanics for RECs, as applicable.*]

December 1, 2023

TO: MCE Technical Committee

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Proposed Amended and Restated Power Purchase and Sale Agreement with G2 Energy, Ostrom Road LLC (Agenda Item #07 C.5)

ATTACHMENT: Amended and Restated Power Purchase and Sale Agreement between MCE and G2 Energy, Ostrom Road LLC

Dear Technical Committee Members:

Summary:

MCE and G2 Energy, Ostrom Road LLC are parties to a power purchase and sale agreement ("PPA" or "Ostrom"), executed December 3, 2010, for deliveries from a 1.6 megawatt ("MW") landfill gas facility located in Wheatland, California.

The Ostrom landfill gas facility consists of two engines, 1.6 MW each. MCE buys the output from one engine and Silicon Valley Power (SVP) buys the output from the second engine. SVP schedules the entire resource into the marketplace, including MCE's share, and receives CAISO revenue. MCE bills SVP for the CAISO revenue associated with its engine. SVP's contract with G2 Energy ends in January 2024 and G2 Energy presented a proposal for MCE to buy the output from the second 1.6 MW engine.

The Ostrom facility is valuable to MCE's portfolio because it provides baseload[1] power as well as Resource Adequacy. G2 Energy's offer for the output from the second 1.6 MW engine is in line with other recent offers for baseload power that MCE has contracted for. While this is a relatively small facility, the addition of the second engine also gives MCE complete control over scheduling the facility and simplifies administration of the agreement.

[1] Baseload power plants provide consistent round the clock power that doesn't typically vary from hour to hour.

Fiscal Impacts:

The PPA price is competitive with similar projects for baseload that were submitted during Open Season and other ad hoc offers. MCE would benefit from the fixed cost of the bundled energy and RA. Initial costs would be accounted for in the Fiscal Year 2023/24 budget and future costs would be accounted for starting in Fiscal Year 2024/25.

Recommendation:

Approve the Amended and Restated Power Purchase and Sale Agreement between MCE and G2 Energy, Ostrom Road LLC.

AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT
by and between
MCE
and
G2 ENERGY, OSTROM ROAD LLC

EXHIBIT E - CONTRACT PRICE

1. Contract Price. Commencing on the Effective Date, the contract price for Net Electrical Output under this Agreement shall be as set forth in Section 1(a) below for each year noted (the "Contract Price"). The Contract Price is a blended price derived from the following prices for each engine:

For Engine 1 in an amount up to and not to exceed 14,016 MWh in any annual period:

Contract Year	Calendar Year	Price (US Dollars)/MWh
11	2024	[redacted]
12	2025	
13	2026	
14	2027	
15	2028	
16	2029	
17	2030	
18	2031	

For Engine 2 in an amount up to and not to exceed 14,016 MWh in any annual period:

Contract Year	Calendar Year	Price (US Dollars)/MWh
11	2024	[redacted]
12	2025	
13	2026	
14	2027	
15	2028	
16	2029	
17	2030	
18	2031	

a) "All In" Energy Annual Pricing when combining the exported power of both Engine 1 and Engine 2:

Contract Year	Calendar Year	Engine No. 1 Price (US Dollars)/MWh	Engine No. 2 Price (US Dollars)/MWh	Contract Price (US Dollars) for Net Electrical Output/MWh
11	2024	[redacted]	[redacted]	[redacted]
12	2025			
13	2026			
14	2027			
15	2028			
16	2029			
17	2030			
18	2031			

b) Production Data. Throughout the Term of this Agreement, Seller shall provide to MCE, on a quarterly basis, monthly production data for each generator located on the Premises.

2. Notice to Seller. As noted in Section 14.01 above, MCE is a public agency subject to the requirements of the California Public Records Act (Cal. Government Code section 6250 et seq.).

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information contained in this Exhibit E, MCE as soon practical but within three (3) days of receipt of the request, shall notify Seller that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed in Section 14.09 of this Agreement. After notifying Seller, MCE shall be permitted to comply with the Requestor's demand.

AMENDED AND RESTATED
POWER PURCHASE AND SALE AGREEMENT
by and between
MCE
and
G2 ENERGY, OSTROM ROAD LLC

EXHIBIT F - INSURANCE COVERAGE REQUIREMENTS

Without limiting the Contractor's indemnification of the MCE, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

   $2,000,000 Each occurrence
   $2,000,000 General aggregate
   $2,000,000 Products/Completed Operations aggregate
   $2,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:

   a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;

   b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

   c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars ($2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of MCE, its Board of Directors, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. MCE, its Board of Directors, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for MCE, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.

2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered

excess insurance only and shall not be called upon to contribute with Contractor's insurance. If such "primary and non- contributing" coverage is included in the text.

E. ADDITIONAL RELATED PROVISIONS

Contractor and MCE agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by MCE, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to MCE for review.

2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge MCE or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to MCE. It is not the intent of MCE to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against MCE for payment of premiums or other amounts with respect thereto.

3. The MCE reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to MCE and as described in this Agreement. Contractor shall file with the MCE all certificates and endorsements for the required insurance policies for MCE's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to MCE, or its representative as set forth below, at or prior to execution of this Agreement. Upon MCE's request, Contractor shall submit to MCE copies of the actual insurance policies or renewals or replacements. Unless otherwise required by

the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to MCE pursuant to this Agreement shall be mailed to:

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the MCE or its insurance compliance representatives.

December 6, 2023

TO: MCE Board of Directors

FROM: Dave Garti, Community Development Manager

RE: 2023 Charles F. McGlashan Advocacy Award Nominations (Agenda Item #08)

ATTACHMENTS: List of Past Charles F. McGlashan Advocacy Award Recipients

Dear Executive Committee Members:

Summary:
The Charles F. McGlashan Advocacy Award was established by MCE in 2011 to recognize individuals and organizations who have demonstrated passion, dedication, and leadership on behalf of MCE. The annual award also honors and commemorates the life and legacy of environmental leadership of founding MCE Chair Charles F. McGlashan.

Recipients of the award are recognized with a ceremony held at a regular meeting of the MCE Board of Directors, typically in February. Recipients will also have their names inscribed on a plaque that shares past awardees and is displayed outside the Charles McGlashan Room at the MCE office in San Rafael. The recipient will also be recognized in MCE's e-newsletter, online blog, and social media.

2023 Charles F. McGlashan Award Nominees:

- Chris Benz, Napa Climate NOW!
- Karen Madden, Marin School of Environmental Leadership (SEL)
- Tom White and Ruthie Levin, Eden Housing

Chris Benz with Napa Climate NOW!

Chris Benz is a Napa-based environmental advocate who cofounded Napa Climate NOW!, a nonprofit organization that champions local action to lower emissions and restore natural climate systems. Through her leadership with Napa Climate NOW!, Chris played an instrumental role in organizing the inaugural Napa Climate Summit in 2023. The Summit convened over 170 stakeholders including state and local elected

officials, municipal staff, and community partners to accelerate climate action throughout Napa County. As part of the summit, MCE staff participated in a panel on available funding opportunities for climate action which led to productive connections with municipal staff.

Chris has been a vocal and active proponent of MCE. She regularly promotes the benefits of MCE service at municipal meetings, and consistently urges local elected officials to utilize MCE programs as a component of climate action planning in Napa County. Through the partnership between MCE and Napa Climate NOW!, Chris has organized six community events in the past year to foster climate action, including an electric vehicle showcase, a multifamily property owner resource fair, and Earth Day events. Through her tireless efforts, Chris has demonstrated how organizing at the local level can create meaningful partnerships to address the climate crisis.

Karen Madden with Marin School of Environmental Leadership

Karen Madden serves as the Lead Teacher for the Marin School of Environmental Leadership, a seminar program at Terra Linda High School in San Rafael that focuses on developing future environmental leaders. In 2023, Karen partnered with MCE staff to develop a curriculum for ninth grade students focused on renewable energy. MCE staff served in a "Community Partner" role with Karen's class and met on a bi-weekly basis with Karen and her students to develop a comprehensive, student led renewable energy outreach and engagement campaign.

As part of their final project, students from Karen's ninth grade class:

- Presented to the City of San Rafael's Sustainability Commission about key components of renewable energy generation,
- Developed an Instagram page with over 150 followers that contained top tips and tricks about making energy efficient choices,
- Held community tabling events at Green Change Marin's annual Earth Day Fair in Mill Valley, and
- Attended Venetia Valley's annual Spring carnival to distribute flyers and key information about MCE's EV charging programs, Deep Green, and general information about community choice energy.

Under her leadership, Karen's students encouraged their peers, parent network, and broader community to adopt renewable energy and build awareness of MCE. Karen recognizes that young people are crucial change agents in addressing the climate crisis and empowered her students to be community minded and civically engaged over the course of the spring 2023 semester.

Tom White and Ruthie Levin with Eden Housing

Through the leadership of Tom White and Ruthie Levin, Eden Housing is currently in the process of electrifying a 91-unit multifamily property in Contra Costa County. Tom

and Ruthie worked with MCE to participate in our Multifamily Energy Savings (MFES) and Low-Income Family and Tenants (LIFT) programs, as well as the Strategic Energy Management (SEM) program to ensure that the property saves both energy and money. Transition of gas appliances to electric options at multifamily housing sites allows greater use of MCE's clean electricity generation to reduce the use of fossil fuels. The current work scope, which includes converting existing gas wall furnaces to electric appliances with space heating and cooling, will reduce greenhouse gas emissions while providing greater comfort to residents.

By utilizing SEM, MFES, and LIFT, Tom and Ruthie have demonstrated their commitment to long term solutions and behavioral changes to support energy resiliency in affordable housing. Eden Housing is consistently on the cutting edge of MCE programs, helping us to design and implement creative solutions that improve the customer experience.

Fiscal Impacts:

None.

Recommendation:

Select the 2023 recipient(s) of the Charles F. McGlashan Advocacy Award to be presented at a future meeting of the MCE Board of Directors.

Past Charles F. McGlashan Advocacy Award Recipients

2011	Barbara George, Women's Energy Matters
2012	The Mainstreet Moms
2013	Lea Dutton of the San Anselmo Quality, Life Commission
2014	Doria Robinson, Urban Tilth
2015	Constance Beutel, Benicia's Community Sustainability Commission
2016	Sustainable Napa County
2017	The El Cerrito Environmental Quality Committee
2018	Sustainable Lafayette Resilient Neighborhoods Verna Causby-Smith, EAH Affordable Housing
2019	Sustainable Rossmoor and the National Council for Jewish Women, Contra Costa Division Gloria Castillo, Canal Alliance
2020	Deborah Elliott, County of Napa Fairfax Climate Action Committee Marin Center for Independent Living (MCIL), Disability Services Legal Center (DSLC), the Independent Living Resources of Solano and Contra Costa (ILRSCC), and Vi Ibarra, Developmental Disabilities Council of Contra Costa County
2021	Sustainable Contra Costa
2022	Matt Belasco, Pittsburg Unified School District Sara Bellafronte, City of Pittsburg Napa Green

December 6, 2023

TO: MCE Executive Committee

FROM: Jenna Tenney, Manager of Communications and Community Engagement
John Dalessi, Pacific Energy Advisors

RE: Revised MCE Implementation Plan to Include the City of Hercules (Agenda Item #10)

ATTACHMENT: Addendum No. 9 to the MCE Implementation Plan and Statement of Intent to the CPUC

Dear Executive Committee Members:

Summary:

On November 16, 2023, your Board approved Resolution No. 2023-12 Approving the City of Hercules as a Member of MCE. On February 8, 2017, the California Public Utilities Commission (CPUC) passed Resolution E-4907, which delays the timeline by which a new member jurisdiction may begin service with a community choice aggregator.

CPUC Resolution E-4907 also requires the submission of an Addendum to MCE's Implementation Plan and Statement of Intent by the end of 2023 to start service in 2025. If the CPUC approves the addendum, customers in Hercules would be eligible for enrollment starting January 1, 2025. Staff would likely recommend enrollment in April 2025, in alignment with the timing of previous new community enrollments.

At the November Board meeting, your Board approved a draft version of Addendum No. 9 to the MCE Implementation Plan and Statement of Intent to the CPUC (Implementation Plan) adding the City of Hercules and authorizing the Executive Committee to approve the final version. Consistent with California Public Utilities Code § 366.2, Staff have completed the draft and now present the final Implementation plan for your approval.

Fiscal Impacts:

None to submit the Implementation Plan. All other fiscal impacts for the addition of the City of Hercules, which are expected to be limited due to the relatively small size of the customer base, have been reviewed at the November 16, 2023 meeting. Specific budgetary impacts would be reflected in FY 2025/26.

Recommendation:

Approve Addendum No. 9 to the MCE Implementation Plan and Statement of Intent and direct Staff to submit to the CPUC.

MARIN CLEAN ENERGY

ADDENDUM NO. 9 TO THE REVISED COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN AND STATEMENT OF INTENT

TO ADDRESS MCE EXPANSION TO THE CITY OF HERCULES

MCE Empowering Our Clean Energy Future
CONTRA COSTA | MARIN | NAPA | SOLANO

November 16, 2023

For copies of this document contact Marin Clean Energy in San Rafael, California or visit www.mcecleanenergy.org

Table of Contents

CHAPTER 1 – INTRODUCTION

The purpose of this document is to make certain revisions to the Marin Clean Energy Implementation Plan and Statement of Intent in order to address the expansion of Marin Clean Energy ("MCE") to the City of Hercules. MCE is a public agency that was formed in December 2008 for purposes of implementing a community choice aggregation ("CCA") program and other energy-related programs targeting significant greenhouse gas emissions ("GHG") reductions. At that time, the Member Agencies of MCE included eight of the twelve municipalities located within the geographic boundaries of Marin County: the cities/towns of Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito and Tiburon and the County of Marin (together the "Members" or "Member Agencies"). In anticipation of CCA program implementation and in compliance with state law, MCE submitted the Marin Energy Authority Community Choice Aggregation Implementation Plan and Statement of Intent ("Implementation Plan") to the California Public Utilities Commission ("CPUC" or "Commission") on December 9, 2009. Consistent with its expressed intent, MCE successfully launched the Marin Clean Energy CCA program ("MCE" or "Program") on May 7, 2010 and has been serving customers since that time.

During the second half of 2011, four additional municipalities within Marin County, the cities of Novato and Larkspur and the towns of Ross and Corte Madera, joined MCE, and a revised Implementation Plan reflecting updates related to this expansion was filed with the CPUC on December 3, 2011.

Subsequently, the City of Richmond, located in Contra Costa County, joined MCE, and a revised Implementation Plan reflecting updates related to this expansion was filed with the CPUC on July 6, 2012.

A revision to MCE's Implementation Plan was then filed with the Commission on November 6, 2012 to ensure compliance with Commission Decision 12-08-045, which was issued on August 31, 2012. In Decision 12-08-045, the Commission directed existing CCA programs to file revised Implementation Plans to conform to the privacy rules in Attachment B of the aforementioned Decision.

During 2015, the County of Napa and the Cities of Benicia, El Cerrito, and San Pablo joined MCE; service was extended to customers in unincorporated Napa County during February 2015 and to customers in Benicia, El Cerrito and San Pablo during May 2015. To address the anticipated effects of these expansions, MCE filed with the Commission a revision to its Implementation Plan on July 18, 2014 to address expansion to the County of Napa (the Commission subsequently certified this revision on September 15, 2014). Following the Commission's certification of this revision, MCE submitted Addendum No. 1 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City of San Pablo ("Addendum No. 1") on September 25, 2014 (and the Commission subsequently certified Addendum No. 1 on October 29, 2014); and Addendum No. 2 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City of Benicia ("Addendum No. 2") on November 21, 2014 (the Commission subsequently certified

Addendum No. 2 on December 1, 2014); and Addendum No. 3 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City of El Cerrito ("Addendum No. 3") on January 7, 2015 (the Commission subsequently certified Addendum No. 3 on January 16, 2015).

On April 21, 2016, MCE's Board of Directors (the "Board" or "Governing Board") unanimously adopted Resolution No. 2016-01, which approved the cities of American Canyon, Calistoga, Lafayette, Napa, St. Helena and Walnut Creek as well as the Town of Yountville as members of MCE. On this date, MCE's Board also approved the related Addendum No. 4 to its Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 4"), which addressed expansion to such Communities. Addendum No. 4 was submitted to the Commission on April 22, 2016; Addendum No. 4 was certified by the Commission thereafter on May 6, 2016.

On July 20, 2017, MCE's Board adopted Resolution No. 2017-06, which approved Contra Costa County (unincorporated areas); the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga as members of MCE. On this date, MCE's Board also approved the related Addendum No. 5 to its Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 5"), which addressed expansion to such Communities. Addendum No. 5 was submitted to the Commission on September 25, 2017; Addendum No. 5 was certified by the Commission thereafter on December 21, 2017.

On October 18, 2018, MCE's Board approved the membership request of Solano County (unincorporated areas) via Resolution No. 2018-12, which also approved the related Addendum No. 6 to MCE's Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 6"), addressing service delivery within the unincorporated areas of Solano County. Addendum No. 6 was submitted to the Commission on November 20, 2018; Addendum No. 6 was certified by the Commission thereafter on February 19, 2019.

Following the aforementioned expansions, MCE's Board approved the membership requests of the cities of Pleasant Hill and Vallejo on November 21, 2019 via Resolution No. 2019-05, which also approved the related Addendum No. 7 to MCE's Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 7"), which addressed service delivery within the cities of Pleasant Hill and Vallejo. Addendum No. 7 was submitted to the Commission on December 6, 2019; Addendum No. 7 was certified by the Commission thereafter on March 9, 2020.

MCE's Board approved the membership request of the City of Fairfield on November 19, 2020 via Resolution No. 2020-03 (attached hereto as Appendix A), and similarly approved this Addendum No. 8 to MCE's Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 8"), which addresses service delivery within the City of Fairfield. Addendum No. 8 was submitted to the Commission on DATE; Addendum No. 8 was certified by the Commission thereafter on DATE.

More recently, MCE's Board approved the membership request of the City of Hercules on November 16, 2023 via Resolution No. 2023-12 (attached hereto as Appendix A), and similarly approved this Addendum No. 9 to MCE's Revised Community Choice Aggregation Implementation Plan and Statement of Intent ("Addendum No. 9"), which addresses service delivery within the City of Hercules.

The MCE program now provides electric generation service to approximately 585,000 customers, including a cross section of residential and commercial accounts. During its more than thirteen-year operating history, non-member municipalities have monitored MCE's progress, evaluating the potential opportunity for membership, which would enable customer choice with respect to electric generation service. In response to such inquiries, MCE's Board adopted Policy 007, which established a formal process and specific criteria for new member additions. In particular, this policy identifies several threshold requirements, including the specification that any prospective member evaluation demonstrate rate-related savings (based on prevailing market prices for requisite energy products at the time of each analysis) as well as environmental benefits (as measured by anticipated reductions in greenhouse gas emissions and increased renewable energy sales to CCA customers) before proceeding with expansion activities, including the filing of related revisions/addenda to this Implementation Plan. As MCE receives new membership requests, staff will follow the prescribed evaluative process of Policy 007 and will present related results at future public meetings. To the extent that membership evaluations demonstrate favorable results and any new community completes the process of joining MCE, this Implementation Plan will be revised through a related addendum, highlighting key impacts and consequences associated with the addition of such new community/communities.

In response to public interest and MCE's successful operational track record, the City of Hercules requested MCE membership, consistent with MCE Policy 007, and adopted the requisite ordinance for joining MCE. As previously noted, MCE's Board approved such membership request at a duly noticed public meeting on November 16, 2023 through the adoption of Resolution No. 2023-12.

This Addendum No. 9 describes MCE's expansion plans to include the City of Hercules. MCE intends to enroll such customers in its CCA Program during the month of April 2025, consistent with the Commission's requirements described in Resolution E-4907, which define relevant timing for Implementation Plan filing in advance of service commencement. According to the Commission, the Energy Division is required to receive and review a revised MCE implementation plan reflecting changes/consequences of additional members. With this in mind, MCE has reviewed its revised Implementation Plan, which was filed with the Commission on July 18, 2014, as well as previously filed and certified Addendums, and has identified certain information that requires updating to reflect the changes and consequences of adding the City of Hercules as well as other forecast modifications, which reflect the most recent historical electric energy use within MCE's existing service territory. This Addendum No. 9 reflects pertinent changes that are expected to result from the new member addition as well as updated projections that are considerate of recent operations. This document format, including references to MCE's

most recent Implementation Plan revision (filed with the Commission on July 18, 2014 and certified by the Commission on September 15, 2014), which is incorporated by reference and attached hereto as Appendix D, addresses all requirements identified in Public Utilities Code Section 366.2(c)(4), including universal access, reliability, equitable treatment of all customer classes and any requirements established by state law or by the CPUC concerning aggregated service, while streamlining public review of pertinent changes related to MCE's anticipated expansion.

CHAPTER 2 – CHANGES TO ADDRESS MCE EXPANSION TO THE CITY OF HERCULES

As previously noted, this Addendum No. 9 addresses the anticipated impacts of MCE's planned expansion to the City of Hercules, as well as other forecast modifications reflecting the most recent historical electric energy use within MCE's existing service territory. As a result of this member addition, certain assumptions regarding MCE's future operations have changed, including customer energy requirements, peak demand, renewable energy purchases, revenues, expenses and various other items. The following section highlights pertinent changes related to this planned expansion. To the extent that certain details related to membership expansion are not specifically discussed within this Addendum No. 9, MCE represents that such information shall remain unchanged relative to the July 18, 2014 Implementation Plan revision.

With regard to the defined terms Members and Member Agencies, the following Communities are now signatories to the MCE Joint Powers Agreement and represent MCE's current membership:

Member Agencies
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
County of Contra Costa
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Fairfield
City of Hercules
City of Lafayette
City of Larkspur
County of Marin
City of Martinez
City of Mill Valley
Town of Moraga
City of Napa
County of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Pleasant Hill
City of Richmond
Town of Ross
Town of San Anselmo
City of Saint Helena
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
County of Solano
Town of Tiburon
City of Vallejo
City of Walnut Creek
Town of Yountville

Throughout this document, use of the terms Members and Member Agencies refer to the aforementioned Communities. To the extent that the discussion herein addresses the process of

aggregation and MCE organization, each of these communities is now an MCE Member and the electric customers of such jurisdictions have been or will be offered CCA service consistent with the noted phase-in schedule.

Aggregation Process

MCE's aggregation process was discussed in Chapter 2 of MCE's July 18, 2014 Revised Implementation Plan. This first paragraph of Chapter 2 is replaced in its entirety with the following verbiage:

As previously noted, MCE successfully launched its CCA Program, MCE, on May 7, 2010 after meeting applicable statutory requirements and in consideration of planning elements described in its initial Implementation Plan. At this point in time, MCE plans to expand agency membership to include the City of Hercules. This community has requested MCE membership, and MCE's Board of Directors subsequently approved this membership request at a duly noticed public meeting on November 16, 2023

Program Phase-In

Program phase-in was discussed in Chapter 5 of MCE's July 18, 2014 Revised Implementation Plan. Chapter 5 is replaced in its entirety with the following verbiage:

MCE will continue to phase-in the customers of its CCA Program as communicated in this Implementation Plan. To date, nine complete phases have been successfully implemented. A tenth phase, which will commence in April 2025, will include service commencement to customers located within the City of Hercules, as reflected in the following table.

MCE Phase No.	Status & Description of Phase	Implementation Date
Phase 1: **8,500 Accounts**	**Complete**: MCE Member (municipal) accounts & a subset of residential, commercial and/or industrial accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies.	May 7, 2010
Phase 2A: **6,100 Accounts**	**Complete**: Additional commercial and residential accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies (incremental addition to Phase 1).	August 2011
Phase 2B: **79,000 Accounts**	**Complete**: Remaining accounts within Marin County.	July 2012
Phase 3: **35,000 Accounts**	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the City of Richmond.	July 2013

MCE Phase No.	Status & Description of Phase	Implementation Date
Phase 4A: 14,000 Accounts	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the unincorporated areas of Napa County, subject to economic and operational constraints.	February 2015
Phase 4B: 30,000 Accounts	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the City of San Pablo, the City of Benicia and the City of El Cerrito, subject to economic and operational constraints.	May 2015
Phase 5: 83,000 Accounts	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the Cities of American Canyon, Calistoga, Lafayette, Napa, Saint Helena, Walnut Creek and the Town of Yountville.	September 2016
Phase 6: 216,000 Accounts	**Complete:** Residential, commercial, agricultural, and street lighting accounts within Contra Costa County (unincorporated areas); the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga.	April 2018
Phase 7: 11,000 Accounts	**Complete:** Residential, commercial, agricultural, and street lighting accounts within Solano County (unincorporated areas).	April 2020
Phase 8: 58,000 Accounts	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the Cities of Pleasant Hill and Vallejo	April 2021
Phase 9: 38,000 Accounts	**Complete**: Residential, commercial, agricultural, and street lighting accounts within the City of Fairfield	April 2022
Phase 10: ~10,000	**Pending Implementation Plan Certification:** Residential, commercial, agricultural, and street lighting accounts within the City of Hercules	April 2025 (planned, pending Implementation Plan Certification)

This approach has provided MCE with the ability to start slow, addressing problems and unforeseen challenges associated with a small, manageable CCA program before offering service to successively larger groups of customers. Following completion of Phase 10 customer enrollments, MCE expects to serve a customer base of approximately 595,000 accounts. This approach has also allowed MCE and its energy suppliers to address all system requirements (billing, collections and payments) under a phase-in approach that was designed to minimize potential exposure to uncertainty and financial risk by "walking" (when serving relatively small

account totals) prior to "running" (when serving much larger account totals). The Board may evaluate other phase-in options based on future market conditions, statutory requirements and regulatory considerations as well as other factors potentially affecting the integration of additional customer accounts.

Sales Forecast

With regard to MCE's sales forecast, which is addressed in Chapter 6, Load Forecast and Resource Plan, MCE assumes that total annual retail sales will increase to approximately 5,600 GWh following Phase 10 expansion. The following tables have been updated to reflect the impacts of planned expansion to MCE's new membership.

Chapter 6, Resource Plan Overview

Marin Clean Energy
Proposed Resource Plan
(GWH)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
MCE Demand (GWh)																	
Retail Demand	-91	-187	-574	-1,116	-1,265	-1,712	-2,241	-2,901	-4,545	-5,543	-5,749	-5,729	-6,007	-6,158	-6,113	-6,185	-6,266
Distributed Generation	0	2	4	5	9	14	135	121	139	472	565	719	891	980	1,078	1,186	1,304
Energy Efficiency	0	0	0	0	1	3	3	5	7	10	16	19	26	45	60	75	90
EV Demand	0	0	0	0	0	0	-22	-29	-38	-75	-95	-357	-447	-536	-613	-683	-737
Losses and UFE	-5	-11	-34	-67	-75	-102	-128	-168	-266	-308	-316	-321	-332	-340	-335	-336	-337
Total Demand	-97	-197	-604	-1,177	-1,330	-1,797	-2,253	-2,973	-4,703	-5,444	-5,578	-5,669	-5,869	-6,009	-5,924	-5,943	-5,945
MCE Supply (GWh)																	
Renewable Resources																	
Generation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Power Purchase Contracts	23	50	291	566	652	927	1,165	1,631	2,582	3,148	3,234	3,284	3,409	3,602	3,737	3,985	4,220
Total Renewable Resources	23	50	291	566	652	927	1,165	1,631	2,582	3,148	3,234	3,284	3,409	3,602	3,737	3,985	4,220
Conventional/Hydro Resources																	
Generation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Power Purchase Contracts	74	147	314	611	678	870	1,088	1,342	2,121	2,296	2,344	2,385	2,460	2,407	2,186	1,958	1,725
Total Conventional/Hydro Resources	74	147	314	611	678	870	1,088	1,342	2,121	2,296	2,344	2,385	2,460	2,407	2,186	1,958	1,725
Total Supply	97	197	604	1,177	1,330	1,797	2,253	2,973	4,703	5,444	5,578	5,669	5,869	6,009	5,924	5,943	5,945
Energy Open Position (GWh)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Chapter 6, Customer Forecast

Marin Clean Energy
Enrolled Retail Service Accounts
Phase-In Period (End of Month)

	May-10	Aug-11	Jul-12	Jul-13	Feb-15	May-15	Sep-16	Apr-18	Apr-20	Apr-21	Apr-22	Apr-25
MCE Customers												
Residential	7,354	12,503	77,345	106,510	120,204	145,874	225,128	421,325	430,493	485,540	522,629	537,793
Commercial & Industrial	579	1,114	9,913	13,098	15,316	17,884	27,274	44,708	46,226	50,627	54,085	54,607
Street Lighting & Traffic	138	141	443	748	1,014	1,156	1,866	3,670	3,973	4,470	4,741	5,268
Ag & Pumping	-	<15	113	109	1,467	1,467	1,700	2,051	3,274	3,292	3,314	3,249
Total	8,071	13,759	87,814	120,465	138,001	166,381	255,968	471,754	483,966	543,929	584,769	600,917

Marin Clean Energy
Retail Service Accounts (End of Year)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
MCE Customers																	
Residential	7,354	12,503	77,345	106,510	106,510	145,874	225,128	226,254	421,325	423,432	430,493	485,540	522,629	524,010	526,630	537,793	540,482
Commercial & Industrial	579	1,114	9,913	13,098	13,098	17,884	27,274	27,410	44,708	44,932	46,226	50,627	54,085	53,659	53,927	54,607	54,880
Street Lighting & Traffic	138	141	443	748	748	1,156	1,866	1,875	3,670	3,688	3,973	4,470	4,741	5,103	5,129	5,268	5,294
Ag & Pumping	-	<15	113	109	109	1,467	1,700	1,709	2,051	2,061	3,274	3,292	3,314	3,217	3,233	3,249	3,265
Total	8,071	13,759	87,814	120,465	120,465	166,381	255,968	257,248	471,754	474,113	483,966	543,929	584,769	585,989	588,919	600,918	603,922

Chapter 6, Sales Forecast

Marin Clean Energy
Energy Requirements
(GWH)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
MCE Energy Requirements (GWh)																	
Retail Demand	91	187	574	1,116	1,265	1,712	2,241	2,901	4,545	5,543	5,749	5,729	6,007	6,158	6,113	6,185	6,266
Distributed Generation	0	-2	-4	-5	-9	-14	-135	-121	-139	-472	-565	-719	-891	-980	-1,078	-1,186	-1,304
Energy Efficiency	0	0	0	0	-1	-3	-3	-5	-7	-10	-16	-19	-26	-45	-60	-75	-90
EV Demand	0	0	0	0	0	0	22	29	38	75	95	357	447	536	613	683	737
Losses and UFE	5	11	34	67	75	102	128	168	266	308	316	321	332	340	335	336	337
Total Load Requirement	97	197	604	1,177	1,330	1,797	2,253	2,973	4,703	5,444	5,578	5,669	5,869	6,009	5,924	5,943	5,945

Chapter 6, Capacity Requirements

Marin Clean Energy
Capacity Requirements
(MW)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Demand (MW)																	
Retail Demand	28	46	182	233	234	318	441	682	1,068	1,293	1,445	1,564	1,725	1,746	1,800	1,859	1,925
Distributed Generation	-	(1)	(2)	(3)	(5)	(8)	(77)	(81)	(94)	(337)	(394)	(483)	(598)	(658)	(724)	(796)	(876)
Energy Efficiency	-	-	-	-	-	-	(1)	(1)	(2)	(2)	(16)	(47)	(47)	(47)	(47)	(47)	(47)
EV Load	-	-	-	-	-	-	10	13	18	34	43	92	115	138	158	176	190
Losses and UFE	2	3	11	14	14	19	22	37	59	59	65	68	72	71	71	72	72
Total Net Peak Demand	30	47	191	244	243	328	396	650	1,050	1,048	1,143	1,194	1,267	1,250	1,259	1,263	1,264
Reserve Requirement (%)	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	16%	17%	17%	17%
Capacity Reserve Requirement	4	7	29	37	36	49	59	97	157	157	171	179	190	200	214	215	215
Capacity Requirement Including Reserve	34	55	220	281	279	378	455	747	1,207	1,205	1,314	1,373	1,457	1,450	1,473	1,478	1,478

Chapter 6, Renewables Portfolio Standards Energy Requirements

Marin Clean Energy
RPS Requirements
(MWH)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Total Retail Sales (MWh)	91,219	185,493	570,144	1,110,487	1,254,794	1,695,274	2,125,091	2,804,277	4,436,963	5,136,159	5,262,209	5,347,756	5,537,211	5,668,782	5,588,339	5,607,000	5,608,858
RPS Procurement Quantity Requirement (%)	20%	20%	20%	20%	22%	23%	25%	27%	29%	31%	33%	36%	39%	41%	44%	47%	49%
Gross RPS Procurement Quantity Requirement (MWh)	18,244	37,099	114,029	222,097	272,290	394,999	531,273	757,155	1,286,719	1,592,209	1,736,529	1,914,497	2,131,826	2,341,207	2,458,869	2,618,469	2,765,167

Marin Clean Energy
RPS Requirements and Program Renewable Energy Targets
(MWH)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Total Retail Sales (MWh)	91,219	185,493	570,144	1,110,487	1,254,794	1,695,274	2,125,091	2,804,277	4,436,963	5,136,159	5,262,209	5,347,756	5,537,211	5,668,782	5,588,339	5,607,000	5,608,858
Gross RPS Procurement Quantity Requirement	18,244	37,099	114,029	222,097	272,290	394,999	531,273	757,155	1,286,719	1,592,209	1,736,529	1,914,497	2,131,826	2,341,207	2,458,869	2,618,469	2,765,167
65% L/T Requirement (2021 Forward)	-	-	-	-	-	-	-	-	-	-	-	1,244,423	1,385,687	1,521,784	4,057,134	6,938,943	10,092,860
Program Renewable Target (MWh)	**24,543**	**51,525**	**166,522**	**364,363**	**646,619**	**866,365**	**1,160,620**	**1,671,167**	**2,756,266**	**3,168,446**	**3,233,866**	**3,284,063**	**3,409,133**	**3,601,660**	**3,737,378**	**3,985,212**	**4,220,323**
Program Target (% of Retail Sales)	27%	28%	29%	33%	52%	51%	55%	60%	62%	62%	61%	61%	62%	64%	67%	71%	75%
Voluntary Margin of Overprocurement (MWh)	**6,299**	**14,426**	**52,493**	**142,266**	**374,329**	**471,366**	**629,347**	**914,012**	**1,469,547**	**1,576,237**	**1,497,337**	**1,369,566**	**1,277,306**	**1,260,453**	**1,278,509**	**1,366,743**	**1,455,156**
Annual Increase (MWh)	24,543	26,982	114,997	197,841	282,256	219,746	294,255	510,547	1,085,099	412,180	65,420	50,197	125,069	192,527	135,718	247,834	235,112

Chapter 6, Energy Efficiency

Marin Clean Energy
Energy Efficiency Savings Goals
(GWH)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
MCE Retail Demand	91	187	574	1,116	1,265	1,712	2,241	2,901	4,545	5,543	5,749	5,729	6,007	6,158	6,113	6,185	6,266
MCE Energy Efficiency Goal	0	0	0	0	-1	-3	-3	-5	-7	-10	-16	-19	-26	-45	-60	-75	-90

Chapter 6, Distributed Generation

Marin Clean Energy
Distributed Generation Projections
(MW)
2010 to 2026

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
DG Capacity	-	1	2	3	5	8	77	81	94	337	394	483	598	658	724	796	876

Financial Plan

With regard to MCE's financial plan, which is addressed in Chapter 7, Financial Plan, MCE has updated its expected operating results, which now include projected impacts related to service expansion within the City of Hercules. The following table reflects updated operating projections in consideration of this planned expansion.

Chapter 7, CCA Program Operating Results

Marin Clean Energy
Summary of CCA Program Phase-In
(January 2010 through December 2026)

CATEGORY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
I. REVENUES FROM OPERATIONS ($)																	
ELECTRIC SALES REVENUE	10,610,804	16,454,790	44,052,111	78,782,938	96,577,968	134,474,212	165,289,480	212,418,679	329,232,524	379,396,284	459,417,279	461,045,535	576,803,370	766,613,247	820,082,624	833,976,835	869,810,588
LESS UNCOLLECTIBLE ACCOUNTS	(29,176)	(140,371)	(299,942)	(540,077)	(662,078)	(921,934)	(1,126,363)	(1,442,225)	(2,351,872)	(2,642,638)	(6,578,102)	(6,165,288)	(15,847,699)	(21,545,823)	(16,922,434)	(17,206,925)	(17,938,543)
TOTAL REVENUES	10,581,628	16,314,419	43,752,169	78,242,861	95,915,890	133,552,278	164,163,116	210,976,455	326,880,652	376,753,646	452,839,177	454,880,247	560,955,671	745,067,424	803,160,190	816,769,910	851,872,045
II. COST OF OPERATIONS ($)																	
(A) ADMINISTRATIVE AND GENERAL (A&G)																	
STAFFING	321,117	430,659	1,077,759	1,386,303	1,825,000	2,710,500	4,728,650	6,151,600	6,920,156	7,571,804	10,918,118	12,643,711	14,826,470	16,597,853	13,917,602	14,335,130	14,765,184
CONTRACT SERVICES	1,035,333	848,063	3,131,840	4,457,964	4,572,751	4,838,757	6,326,457	7,370,528	9,017,602	9,244,578	11,040,677	15,404,604	10,544,475	11,273,052	17,106,672	17,535,437	17,860,044
IOU FEES (INCLUDING BILLING)	19,548	60,794	287,618	584,729	660,114	877,953	1,124,270	1,261,350	1,775,059	1,873,962	2,080,744	2,246,449	2,279,677	2,562,100	2,787,124	2,920,852	3,023,045
OTHER A&G	191,261	189,204	249,729	302,806	373,125	610,500	791,750	1,284,784	1,398,107	2,057,959	3,466,146	3,735,212	2,795,821	3,133,908	2,325,747	2,395,520	2,467,385
SUBTOTAL A&G	1,567,259	1,528,720	4,746,946	6,731,802	7,430,990	9,037,711	12,971,126	16,068,262	19,110,924	20,748,303	27,505,685	34,029,976	30,446,443	33,566,913	36,137,146	37,186,939	38,115,659
(B) COST OF ENERGY	7,418,662	11,881,494	35,805,704	68,624,319	84,358,061	118,264,445	144,457,641	190,345,081	264,842,182	297,178,130	382,216,527	420,577,364	542,017,581	552,282,880	691,035,929	743,125,503	773,930,119
(C) DEBT SERVICE	654,595	394,777	747,729	1,195,162	1,195,162	2,451,457	458,000	228,875	21,945	82,833	198,766	178,989	183,332	197,063	220,000	220,000	220,000
TOTAL COST OF OPERATION	9,640,516	13,804,991	41,300,380	76,551,283	92,984,212	129,753,613	157,886,767	206,642,218	283,975,051	318,009,266	409,920,978	454,786,329	572,647,356	586,046,856	727,393,075	780,532,441	812,265,778
CCA PROGRAM SURPLUS/(DEFICIT)	941,112	2,509,428	2,451,789	1,691,578	2,931,677	3,798,665	6,276,350	4,334,236	42,905,601	58,744,380	42,918,199	93,918	(11,691,685)	159,020,568	75,767,115	36,237,469	39,606,267

Expansion Addendum Appendices

Appendix A: Marin Clean Energy Resolution 2023-12
Appendix B: Joint Powers Agreement
Appendix C: City of Hercules Ordinance
Appendix D: Marin Clean Energy Revised Implementation Plan and Statement of Intent (July 18, 2014) [to be added for submission]

Appendix A: Marin Clean Energy Resolution 2023-12

RESOLUTION NO. 2023-12

A RESOLUTION OF THE BOARD OF DIRECTORS OF MCE APPROVING THE CITY OF HERCULES AS A MEMBER OF MCE

WHEREAS, on September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA"); and,

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and on December 19, 2008, Marin Clean Energy ("MCE"), (formerly the Marin Energy Authority) was established as a joint power authority pursuant to a Joint Powers Agreement, as amended from time to time ("MCE Joint Powers Agreement"); and,

WHEREAS, on February 2, 2010, the California Public Utilities Commission certified the "Implementation Plan" of MCE, confirming MCE's compliance with the requirements of the Act; and,

WHEREAS, MCE members include the following communities: the County of Contra Costa, the County of Marin, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the City of Fairfield, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the City of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of San Ramon, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, requested membership in MCE was made by the City of Hercules, June 13, 2023; and,

WHEREAS, the ordinance approving membership in MCE was approved by the City of Hercules; and,

WHEREAS, the applicant analysis for the City of Hercules was completed in October 2023, and yielded a potentially positive result;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, by the Board of Directors of MCE that the City of Hercules is approved as a member of MCE.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on the sixteenth day of November 2023 by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				X
Contra Costa County				X
County of Napa	X			
County of Solano	X			
City of American Canyon	X			
City of Belvedere				X
City of Benicia	X			
City of Calistoga	X			
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax				X
City of Fairfield				X
City of Lafayette	X			
City of Larkspur	X			
City of Martinez	X			
City of Mill Valley	X			
Town of Moraga	X			
City of Napa	X			
City of Novato	X			
City of Oakley	X			
City of Pinole	X			
City of Pittsburg	X			
City of Pleasant Hill	X			
City of San Ramon	X			
City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo	X			
City of San Rafael				X
City of Sausalito	X			
City of St. Helena	X			
Town of Tiburon	X			

City of Vallejo				X
City of Walnut Creek	X			
Town of Yountville	X			

DocuSigned by:

5185F1BAECF0439...

SHANELLE SCALES-PRESTON, CHAIR

ATTEST:

DocuSigned by:

A59878416EBC4E8...

DAWN WEISZ, SECRETARY

Appendix B: Joint Powers Agreement

Marin Energy Authority
- Joint Powers Agreement -

Effective December 19, 2008
As amended by Amendment No. 1 dated December 3, 2009
As further amended by Amendment No. 2 dated March 4, 2010
As further amended by Amendment No. 3 dated May 6, 2010
As further amended by Amendment No. 4 dated December 1, 2011
As further amended by Amendment No. 5 dated July 5, 2012
As further amended by Amendment No. 6 dated September 5, 2013
As further amended by Amendment No. 7 dated December 5, 2013
As further amended by Amendment No. 8 dated September 4, 2014
As further amended by Amendment No. 9 dated December 4, 2014
As further amended by Amendment No. 10 dated April 21, 2016 As further amended by Amendment No. 11 dated May 19, 2016
As further amended by Amendment No. 12 dated July 20, 2017
As further amended by Amendment No. 13 dated October 18, 2018
As further amended by Amendment No. 14 dated November 21, 2019
As further amended by Amendment No. 15 dated November 19, 2020
As further amended by Amendment No. 16 dated November 16, 2023

Among the Following Parties:
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Fairfield
City of Hercules
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole

City of Pittsburg
City of Pleasant Hill
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
City of St. Helena
Town of Tiburon
City of Vallejo
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin
County of Napa
County of Solano

MARIN ENERGY AUTHORITY
JOINT POWERS AGREEMENT

This **Joint Powers Agreement** ("Agreement"), effective as of December 19, 2008, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B ("Parties"). The term "Parties" shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.

2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.

3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.

4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority ("Authority"), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") in order to collectively study, promote, develop, conduct, operate, and manage energy programs.

5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 ("CCA Program"). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **Definitions**. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 **Documents Included**. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

Exhibit A:	Definitions
Exhibit B:	List of the Parties
Exhibit C:	Annual Energy Use
Exhibit D:	Voting Shares

1.3 **Revision of Exhibits**. The Parties agree that Exhibits B, C and D to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2
FORMATION OF MARIN ENERGY AUTHORITY

2.1 **Effective Date and Term**. This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 **Initial Participants**. During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

2.3 **Formation**. There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.

2.4 **Purpose**. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.

2.5 **Powers**. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:

2.5.1 make and enter into contracts;
2.5.2 employ agents and employees, including but not limited to an Executive Director;
2.5.3 acquire, contract, manage, maintain, and operate any buildings, works or improvements;
2.5.4 acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
2.5.5 lease any property;
2.5.6 sue and be sued in its own name;
2.5.7 incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
2.5.8 issue revenue bonds and other forms of indebtedness;
2.5.9 apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Rules and Regulations"); and

2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.6 **Limitation on Powers**. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.

2.7 **Compliance with Local Zoning and Building Laws**. Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

ARTICLE 3
AUTHORITY PARTICIPATION

3.1 **Addition of Parties**. Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.

3.2 **Continuing Participation**. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4
GOVERNANCE AND INTERNAL ORGANIZATION

4.1 **Board of Directors**. The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

4.2 **Appointment and Removal of Directors**. The Directors shall be appointed and may be removed as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party. As an alternative to appointing its own Director and alternate Director, the governing body of any Party may elect to designate another Party within the same county (the "designated Party") to represent it on the Board with the Director and alternate Director from the designated Party (the "consolidated Parties"). Notwithstanding any provision in this Agreement to the contrary, in the case of such an election by one or more Parties in the same county, the designated Party shall have the combined votes and voting shares of the consolidated Parties and shall vote on behalf of the consolidated Parties. The governing body of a Party may revoke its designation of another Party to vote on its behalf at any time. Neither an election by a Party to designate another Party to vote on its behalf or a revocation of this election shall be effective unless provided in a written notice to the Authority.

4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its

Director and/or alternate Director has been removed may appoint a replacement.

4.3 **Terms of Office**. Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.

4.4 **Quorum**. A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

4.5 **Powers and Function of the Board**. The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.

4.6 **Executive Committee**. The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.

4.7 **Commissions, Boards and Committees**. The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.

4.8 **Director Compensation**. Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

4.9 **Board Voting Related to the CCA Program**.

4.9.1. To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one

Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.

4.9.2. Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.

4.9.2.1 Pro Rata Voting Share. Each Director shall have an equal voting share as determined by the following formula: (1/total number of Directors) multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 50, where (a) "Annual Energy Use" means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWhs"), within the Party's respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party's respective jurisdiction, and any additional jurisdictions which they represent, that are served by the Authority and (b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

4.9.2.3 The voting shares are set forth in Exhibit D. Exhibit D may be updated to reflect revised annual energy use amounts and any changes in the parties to the Agreement without amending the Agreement provided that the Board is provided a copy of the updated Exhibit D.

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 **Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions.** The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

4.12 **Meetings and Special Meetings of the Board**. The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.13 **Selection of Board Officers.**

4.13.1 **Chair and Vice Chair**. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or (b) the Party that he or she represents withdraws form the Authority pursuant to the provisions of this Agreement.

4.13.2 **Secretary**. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of

all meetings of the Board and all other official records of the Authority.

4.13.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depositary of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

4.14 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers that will be known as an Administrative Services Agreement. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 5
IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

5.1.1 Enabling Ordinance. Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

5.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

5.1.3 Effect of Vote On Required Implementation Action. In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program ("Required Implementation Action"), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any

time in accordance with any applicable requirements of state law.

5.2 **Authority Documents**. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 7.

ARTICLE 6
FINANCIAL PROVISIONS

6.1 **Fiscal Year**. The Authority's fiscal year shall be 12 months commencing April 1 and ending March 31. The fiscal year may be changed by Board resolution.

6.2 **Depository**.

6.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

6.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

6.3 **Budget and Recovery Costs**.

6.3.1 **Budget**. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected

expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed $500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County**.** This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.

6.3.4 General Costs. Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

6.3.5 Other Energy Program Costs. Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

ARTICLE 7
WITHDRAWAL AND TERMINATION

7.1 <u>Withdrawal</u>.

7.1.1 General.

7.1.1.1 Prior to the Authority's execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 6 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 Involuntary Termination of a Party. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination

shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

7.3 **Continuing Liability; Refund**. Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. In addition, such Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

7.4 **Mutual Termination**. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

7.5 **Disposition of Property upon Termination of Authority**. Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Dispute Resolution**. The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should

such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.

8.2 **Liability of Directors, Officers, and Employees**. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

8.3 **Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

8.4 **Amendment of this Agreement**. This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

8.5 **Assignment**. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the

successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

8.6 **Severability**. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

8.7 **Further Assurances**. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

8.8 **Execution by Counterparts**. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

8.9 **Parties to be Served Notice**. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Leon Garcia

Name: Leon Garcia

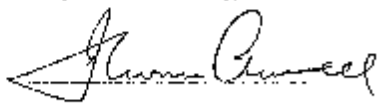
Title: Mayor

Date: 4.7.16

Party: City of American Canyon

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: 

Name: Thomas Cromwell

Title: Mayor

Date: December 8, 2008

Party: City of Belvedere

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Elizabeth Patterson

Title: Mayor

Date: 12.29.14

Party: City of Benicia

APPROVED AS TO FORM
_____
CITY ATTORNEY

ARTICLE 9

SIGNATURE

IN WITNESS WIIEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Dylan Feik

Title: City Manager

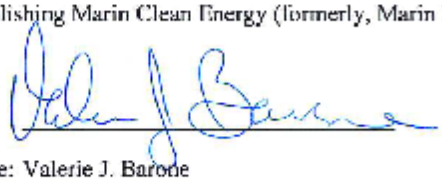
Date: April 7, 2016

Party: City of Calistoga

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Valerie J. Barone

Title: City Manager

Date: July 24, 2017

Party: City of Concord

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Alexandra Cock

Title: Mayor

Date: December 6, 2011

Party: Town of Corte Madera

ATTEST

_____
Christine Green, Town Clerk

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Joseph A. Calabrigo

Title: Town Manager

Date: July 17, 2017

Party: Town of Danville

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Scott Eaton

Title: City Manager

Date: 1/8/14

Party: City of El Cerrito

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: David Weinsoff

Name: David Weinsoff

Title: Mayor

Date: 2.12.09

Party: Town of Fairfax

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Sean P. Quinn

Title: Interim City Manager

Date: 12/17/19

Party: City of Fairfield

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: DocuSigned by: Dante Hall 664EC62BC8D8428...

Name: Dante Hall

Title: City Manager

Date: 10/20/2023

Party: City of Hercules

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mark Mitchell

Title: Mayor

Date: 3-14-16

Party: City of Lafayette

Attest:

_____

Joanne Robbins, City Clerk

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Larry Chu

Title: Mayor, Larkspur

Date: November 16, 2011

Party: CITY OF LARKSPUR

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Brad Kilger

Title: City Manager

Date: 7/26/17

Party: City of Martinez

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Robert Priebe

Name: Robert Priebe

Title: Town Manager

Date: July 24, 2017

Party: Town of Moraga

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: S Marshall

Name: Shawn E. Marshall

Title: Mayor

Date: December 2, 2008

Party: City of Mill Valley

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mike Parness

Title: City Manager

Date: 4-11-16

Party: City of Napa

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Madeline R. Kellner

Name: Madeline R. Kellner

Title: Mayor

Date: October 7, 2011

Party: City of Novato

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Bryan H. Montgomery

Name: Bryan H. Montgomery

Title: City Manager

Date: 8/1/17

Party: City of Oakley

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Michelle Fitzer

Name: Michelle Fitzer

Title: City Manager

Date: 7/5/17

Party: City of Pinole

Approved as to form:

By:

Name: Eric Casher

Title: City Attorney

Date: 7/5/17

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Joe Sbranti

Title: City Manager

Date: 7/24/2017

Party: City of Pittsburg

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: June Catalano

Title: City Manager

Date: June 19, 2019

Party: City of Pleasant Hill

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority

By: Gayle McLaughlin

Name: Gayle McLaughlin

Title: Mayor

Date: 7/5/12

Party: City of Richmond

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Carla Small

Title: Mayor

Date: 11/16/11

Party: Town of Ross

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: Peter Breen

Title: Mayor

Date: January 9, 2009

Party: Town of San Anselmo

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Paul V. Morris

Title: Mayor, City of San Pablo

Date: SEPT. 16, 2014

Party: City of San Pablo

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Cyr N. Miller

Name: Cyr N. Miller

Title: Vice Mayor

Date: December 1, 2009

Party: City of San Rafael

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: JOE GORTON

Title: CITY MANAGER

Date: 7/31/17

Party: City of San Ramon

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: Amy Belser

Name: Amy Belser

Title: Mayor

Date: November 18, 2008

Party: City of Sausalito

Attest:

Deputy City Clerk

Item: 5A
Meeting Date: 11-18-08
Page #: 24

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Alan Galbraith

Name: Alan Galbraith

Title: Mayor

Date: 4/14/16

Party: City of St. Helena

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint
establishing the Marin Energy Authority.

By: _____

Name: ALICE FREDERICKS

Title: MAYOR

Date: 2/10/09

Party: TOWN OF TIBURON

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Greg Nyhoff

Name:

Title: City Manager

Date: June 12, 2019

Party: City of Vallejo

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: Loella Haskew

Name: LOELLA HASKEW

Title: MAYOR

Date: 4/13/16

Party: City of Walnut Creek

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Steven R. Rogers

Title: Town Manager

Date: 4/12/16

Party: Town of Yountville

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Federal D. Glover

Title: Chair, Board of Supervisors

Date: August 1, 2017

Party: Contra Costa County

ARTICLE 9
SIGNATURE

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority.

By: _____

Name: CHARLES F. McGLASHAN

Title: PRESIDENT, BD OF SUPERVISORS

Date: November 18 2008

Party: COUNTY OF MARIN

ARTICLE 9

Marin Clean Energy JPA Agreement

SIGNATURE

Amendment No. 8

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Mark Luce,

Title: Chairman, Napa County Board of Supervisors

Date: 7/22/14

Party: Napa County

Approved as to form:

_____ Date 7/21/14

Minh Tran,

County Counsel

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: _____

Name: Birgitta E. Corsello

Title: County Administrator

Date: 9/26/18

Party: County of Solano

APPROVED AS TO FORM:

_____
Solano County Counsel

Exhibit A

To the
Joint Powers Agreement
Marin Energy Authority

-Definitions-

"AB 117" means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.

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

"Administrative Services Agreement" means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

"Agreement" means this Joint Powers Agreement.

"Annual Energy Use" has the meaning given in Section 4.9.2.2.

"Authority" means the Marin Energy Authority.

"Authority Document(s)" means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

"Board" means the Board of Directors of the Authority.

"CCA" or "Community Choice Aggregation" means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

"CCA Program" means the Authority's program relating to CCA that is principally described in Sections 2.4 and 5.1.

"Director" means a member of the Board of Directors representing a Party.

"Effective Date" means the date on which this Agreement shall become effective and the Marin Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

"Implementation Plan" means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the

California Public Utilities Commission for the purpose of describing a proposed CCA Program.

"Initial Costs" means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of an Executive Director and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority's initial activities or in support of the negotiation, preparation and approval of one or more Administrative Services Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

"Initial Participants" means, for the purpose of this Agreement, the signatories to this JPA as of May 5, 2010 including City of Belvedere, Town of Fairfax, City of Mill Valley, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon and County of Marin.

"Operating Rules and Regulations" means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

"Parties" means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

"Party" means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

"Program Agreement 1" means the agreement that the Authority will enter into with an energy service provider that will provide the electricity to be distributed to customers participating in the CCA Program.

"Total Annual Energy" has the meaning given in Section 4.9.2.2.

Exhibit B

To the
Joint Powers Agreement
Marin Energy Authority

-List of the Parties-

City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Fairfield
City of Hercules
City of Lafayette
City of Larkspur
City of Martinez
Town of Moraga
City of Mill Valley
City of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Pleasant Hill City of Richmond Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
St. Helena
Town of Tiburon
City of Vallejo
City of Walnut Creek
Town of Yountville
County of Contra Costa
County of Marin County of Napa
County of Solano

Marin Clean Energy

- Annual Energy Use -

This Exhibit C is effective as of November 16, 2023.

MCE Member Community	kWh (2022)
City of American Canyon	81,427,344
City of Belvedere	8,237,519
City of Benicia	94,928,828
City of Calistoga	28,672,196
City of Concord	464,522,261
Town of Corte Madera	40,679,971
County of Contra Costa	641,627,822
Town of Danville	154,016,934
City of El Cerrito	55,954,420
Town of Fairfax	17,441,179
City of Fairfield*	452,596,498
City of Hercules**	75,602,000
City of Lafayette	91,628,665
City of Larkspur	41,529,142
City of Martinez	144,050,725
City of Mill Valley	44,544,689
County of Marin	225,874,556
Town of Moraga	42,086,139
City of Napa	273,494,891
County of Napa	296,199,222
City of Novato	188,226,487
City of Oakley	111,135,099
City of Pinole	57,339,339
City of Pittsburg	232,985,737
City of Pleasant Hill	130,900,910
City of Richmond	387,473,558
Town of Ross	9,860,762
Town of San Anselmo	31,648,284
City of San Ramon	270,273,787
City of Saint Helena	44,870,258
City of San Pablo	63,297,704
City of San Rafael	206,521,192
City of Sausalito	30,635,006
County of Solano	177,643,279
Town of Tiburon	27,721,503
City of Vallejo	335,923,675
City of Walnut Creek	323,700,192
Town of Yountville	30,326,651
MCE Total Energy Use	5,935,598,420

*2020 usage data as provided by PG&E.
**2021/2022 usage data as provided by PG&E.
All other usage data reflects MCE customer billing records for 2022.

Marin Clean Energy

- Voting Shares -

This Exhibit D is effective as of November 16, 2023.

MCE Member Community	kWh (2022)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of American Canyon	81,427,344	1.32%	0.69%	***2.00%***
City of Belvedere	8,237,519	1.32%	0.07%	***1.39%***
City of Benicia	94,928,828	1.32%	0.80%	***2.12%***
City of Calistoga	28,672,196	1.32%	0.24%	***1.56%***
City of Concord	464,522,261	1.32%	3.91%	***5.23%***
Town of Corte Madera	40,679,971	1.32%	0.34%	***1.66%***
County of Contra Costa	641,627,822	1.32%	5.40%	***6.72%***
Town of Danville	154,016,934	1.32%	1.30%	***2.61%***
City of El Cerrito	55,954,420	1.32%	0.47%	***1.79%***
Town of Fairfax	17,441,179	1.32%	0.15%	***1.46%***
City of Fairfield*	452,596,498	1.32%	3.81%	***5.13%***
City of Hercules**	75,602,000	1.32%	0.64%	***1.95%***
City of Lafayette	91,628,665	1.32%	0.77%	***2.09%***
City of Larkspur	41,529,142	1.32%	0.35%	***1.67%***
City of Martinez	144,050,725	1.32%	1.21%	***2.53%***
City of Mill Valley	44,544,689	1.32%	0.38%	***1.69%***
County of Marin	225,874,556	1.32%	1.90%	***3.22%***
Town of Moraga	42,086,139	1.32%	0.35%	***1.67%***
City of Napa	273,494,891	1.32%	2.30%	***3.62%***
County of Napa	296,199,222	1.32%	2.50%	***3.81%***
City of Novato	188,226,487	1.32%	1.59%	***2.90%***
City of Oakley	111,135,099	1.32%	0.94%	***2.25%***
City of Pinole	57,339,339	1.32%	0.48%	***1.80%***
City of Pittsburg	232,985,737	1.32%	1.96%	***3.28%***
City of Pleasant Hill	130,900,910	1.32%	1.10%	***2.42%***
City of Richmond	387,473,558	1.32%	3.26%	***4.58%***
Town of Ross	9,860,762	1.32%	0.08%	***1.40%***
Town of San Anselmo	31,648,284	1.32%	0.27%	***1.58%***
City of San Ramon	270,273,787	1.32%	2.28%	***3.59%***
City of Saint Helena	44,870,258	1.32%	0.38%	***1.69%***
City of San Pablo	63,297,704	1.32%	0.53%	***1.85%***
City of San Rafael	206,521,192	1.32%	1.74%	***3.06%***
City of Sausalito	30,635,006	1.32%	0.26%	***1.57%***
County of Solano	177,643,279	1.32%	1.50%	***2.81%***
Town of Tiburon	27,721,503	1.32%	0.23%	***1.55%***
City of Vallejo	335,923,675	1.32%	2.83%	***4.15%***
City of Walnut Creek	323,700,192	1.32%	2.73%	***4.04%***
Town of Yountville	30,326,651	1.32%	0.26%	***1.57%***
MCE Total Energy Use	5,935,598,420	50.00%	50.00%	***100.00%***

*2020 usage data as provided by PG&E.
**2021/2022 usage data as provided by PG&E.
All other usage data reflects MCE customer billing records for 2022.

Appendix C: City of Hercules Ordinance

ORDINANCE NO. 546

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING THE MARIN CLEAN ENERGY JOINT POWERS AGREEMENT AND AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM.

WHEREAS, the City of Hercules has been actively investigating options to provide electric services to constituents within its service area with the intent of promoting use of renewable energy and competitive retail choice and reducing energy-related greenhouse gas emissions; and

WHEREAS, Assembly Bill (AB) 117 (Stat. 2002, ch. 838; see California Public Utilities Code section 366.2 *et seq.;* hereinafter referred to as the "Act") authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation ("CCA"); and

WHEREAS, AB 32 was signed into law in 2006 establishing the goal of reducing the State's greenhouse gas emissions to 1990 levels by 2020; and

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency, and to this end, the City of Hercules has been evaluating a CCA program through Marin Clean Energy ("MCE"), established as a joint powers authority pursuant to California Government Code § 6500 et seq; and

WHEREAS, on February 2, 2010, the California Public Utilities Commission certified the Implementation Plan of MCE, confirming MCE's compliance with the requirements of the Act; and

WHEREAS, electricity in Hercules is generated and provided by Pacific Gas and Electric (PG&E) and there is not currently an alternative provider in the City. PG&E is currently working to add more renewable energy to its power mix under California's renewable portfolio standard and offered 48 percent renewable energy in 2021; and

WHEREAS, the City of Hercules is committed to the development of renewable energy generation and energy efficiency improvements, reduction of greenhouse gases, and protection of the environment and fully supports MCE's current electricity procurement plan, which targets more than 60 percent renewable energy content; and

WHEREAS, the City of Hercules finds it important that its residents, businesses, and public facilities have alternative choices to energy procurement beyond PG&E; and

WHEREAS, the City of Hercules finds that joining MCE will offer Hercules customers choice

in their power provider and will help the City meet the State goal set out in AB 32; and

WHEREAS, in order to become a member of MCE, the MCE Joint Powers Agreement requires the City to adopt an ordinance electing to implement a CCA program within its jurisdiction by and through its participation in MCE; and

WHEREAS, MCE will govern and operate the CCA program on behalf of the City. The City 's participation in MCE will include membership on the Board of Directors as provided in the Joint Powers Agreement; and

WHEREAS, MCE will enter into agreements with electric power suppliers and other services providers and, based on these agreements, MCE plans to provide power to residents and businesses at rates that are competitive with those of the incumbent utility; and

WHEREAS, California Public Utilities Code § 366.2 allows customers the right to opt out of the MCE CCA program and continue to receive service from PG&E. Customers who desire to continue to receive service from PG&E will be able to do so at any time; and

WHEREAS, on May 9, 2023, the City Council held a public meeting at which time interested persons had an opportunity to testify either in support or in opposition to implementation of the MCE CCA program within the City.

NOW, THEREFORE, the City Council of the City of Hercules does ordain as follows:

SECTION 1. CEQA. This ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment because it involves an organizational activity of a local government. 14 Cal. Code Regs. § 15378(a). The ordinance is expressly exempt from CEQA because it is an organizational or administrative activity of governments that will not result in direct or indirect physical change in the environment. 14 Cal. Code Regs. § 15378(b)(5). The ordinance is also exempt from CEQA because it is merely a change in organization of local agencies. 14 Cal. Code Regs. § 15320. Further, the ordinance is exempt from CEQA because there is no possibility that the ordinance or its implementation, which would only result in the formation of a governmental organization, would have a significant negative effect on the environment. 14 Cal. Code Regs. § 15061(b)(3).

SECTION 2. AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM. Based upon the foregoing, the City hereby elects to implement a CCA program within the jurisdiction of the City by participating in the MCE CCA program, as described in the MCE Joint Powers Agreement (Exhibit 1), and authorizes the City Manager, or designee, to execute the Joint Powers Agreement.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held for any reason to be invalid or unconstitutional by a decision of any

court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect 30 days after its adoption.

Within fifteen days after the passage of this ordinance, the City Clerk shall cause it or a summary of it to be posted in the three places designated by resolution of the City Council.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Hercules held on the 9th day of May, 2023.

ADOPTED and ordered posted at a meeting of the City Council of the City of Hercules, held on the 23rd day of May, 2023, by the following vote of the Council:

AYES: Council Members: Tiffany Grimsley, Chris Kelley, Dion Bailey and Mayor Walker - Griffin
NOES: Vice Mayor Dan Romero
ABSTAIN: NONE
ABSENT: NONE

DS

DocuSigned by:

FFC7BABD57C6457...

Alexander Walker-Griffin, Mayor

ATTEST:

Eibleis Melendez, City Clerk

December 1, 2023

TO: MCE Technical Committee

FROM: Paul Krebs, Power Procurement Manager

RE: Proposed Energy Storage Service Agreement with Cormorant Energy Storage, LLC (Agenda Item #12)

ATTACHMENT: A. Energy Storage Agreement with Cormorant Energy Storage, LLC
B. Cormorant Overview Presentation

Dear Board Members:

Background:

MCE's 2023 Open Season procurement process had three primary goals:

1. Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage.
2. Add Resource Adequacy (RA) supply to MCE's portfolio.
3. Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040.

As a result of the solicitation, staff received an offer from Cormorant Energy Storage, LLC ("Cormorant") for a new stand-alone battery energy storage system ("BESS") that will come online in 2026. The proposed facility would satisfy MCE's MTR procurement obligation for 2026.

Summary:

The Cormorant project is being developed by Arevon Energy ("Arevon") and 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 attached Energy Storage Service Agreement ("ESSA") agreement outlines the terms for the guaranteed delivery of 130 megawatts (MW) and 4 hours of storage capacity as well as MCE's rights to the associated energy, Resource Adequacy ("RA") and Ancillary Services products. In addition to contributing to MCE's MTR compliance obligation, the contract would be a valuable addition to MCE's RA portfolio.

Rationale:

The ESSA is a good fit for MCE's portfolio based on the following considerations:

- 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.

Additional Information:

<u>About Arevon Energy</u>

- 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.

<u>Contract Overview</u>

- Project: 130 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.

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 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.

EXECUTION VERSION

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 130 MW/520 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: 130 MW for four (4) hour discharge

Storage Contract Output: 520 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	
3	
4	
5	
6	

7		[redacted]
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]

TABLE OF CONTENTS

Page

Exhibits:

ENERGY STORAGE SERVICE AGREEMENT

This 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; and

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.5(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 in 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 in 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.

"**Curtailment 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.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment 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_{AC} 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.

"**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_{AC}) 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 $MWh\text{-}_{AC}$) 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 [redacted]

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 90th 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] *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. "**Replacement Price**"

means (a) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Capacity Attributes not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Capacity Attributes, or at Buyer's option, (b) the market price for such replacement Capacity Attributes not delivered as determined by Buyer in a commercially reasonable manner; provided, however, Buyer shall not be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability.

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;

(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 [redacted]

(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 1st and September 30th, 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 1st to September 30th, (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) [redacted]

(b) [redacted]

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 the initial amount of the Development Security. 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] after the Guaranteed Construction Start Date;

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

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

(iv) if, Seller fails to maintain the Minimum Efficiency Rate over any rolling 12-month period during the Delivery Term;

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

11.8 **Seller Post-Termination Obligations**. If this Agreement is terminated due to a Seller Event of Default, Seller shall not enter into any agreement to sell any Product from the Facility within three (3) years after the effective date of such termination without first having provided written notice to Buyer of an offer to purchase such Product (a "**ROFO Offer**"). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer. If Buyer provides notice to Seller accepting the ROFO Offer within thirty (30) days, then the Parties shall negotiate in good faith to enter into a binding agreement for purchase and sale of Product in accordance with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of this Agreement. If the Parties fail to enter into a binding agreement within ninety (90) days of

Buyer's acceptance of the ROFO Offer, then Seller shall have the right to enter into any other agreement for the purchase and sale of Product with one or more third parties within the next one hundred eighty (180) days, so long as the prices under such agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any agreement to sell any Product from the Facility that Seller enters into within two (2) years after Buyer's termination of this Agreement due to a Seller Event of Default.

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 Two Million Dollars ($2,000,000) per occurrence, and a general aggregate of not less than Five Million Dollars ($5,000,000), 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 Ten Million Dollars ($10,000,000) 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 One Million Dollars ($1,000,000.00) for bodily injury by accident-each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) disease policy limit and One Million Dollar ($1,000,000) 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 One Million Dollars ($1,000,000) 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 Two Million Dollars ($2,000,000) 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

By: _____
Name: _____
Title: _____
Date: _____

MARIN CLEAN ENERGY, a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

CORMORANT ENERGY STORAGE, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

MARIN CLEAN ENERGY, a California joint powers authority

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): 520 MWh

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

Maximum Charging Capacity at COD: 130 MW

Maximum Discharging Capacity at COD: 130 MW

Operating Restrictions of Facility: See Exhibit Q

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: 520 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] 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] 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] (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]

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]

(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 by [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]

(f) Test Product. [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 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 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_{AC} 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 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 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 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 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 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, statue or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the 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 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[1]

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		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N

NOTICES

Cormorant Energy Storage, LLC	Marin Clean Energy
All Notices: 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	**All Notices:** Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Reference Numbers: Duns: N/A Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: [redacted] Federal Tax ID Number: [redacted]
Invoices: Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	**Invoices:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: Asset Management Phone: 480-653-8452 Email: AREVON-CAM@arevonenergy.com	**Scheduling:** Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Asset Management Phone: 480-653-8452 Email: AREVON-CAM@arevonenergy.com	**Confirmations:** Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	**Payments:** Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: [redacted]	**Wire Transfer:** [redacted]
Credit and Collections: Attn: Settlements Phone: 480-653-8452 Email: settlements@arevonenergy.com	**Credit and Collections:** Attn: Chief Financial Officer Phone: (415) 464-6037 Email: finance@mcecleanenergy.org

Cormorant Energy Storage, LLC	Marin Clean Energy
With additional Notices of an Event of Default to: Attn: Justin Johnson, COO Phone: 480-653-8450 Email: contractnotices@arevonenergy.com	**With additional Notices of an Event of Default to:** 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_{AC}, 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 PROTCOL

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 ±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:

_____

_____

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:

_____

_____

EXHIBIT P

STORAGE FACILITY AVAILABILITY

[redacted]

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.

Maximum Stored Energy Level:	520 MWh at COD; Storage Contract Output thereafter
Minimum Stored Energy Level:	0 MWh
Maximum Charging Capacity:	-130 MW
Minimum Charging Capacity:	1 MW
Maximum Discharging Capacity:	130 MW
Minimum Discharging Capacity:	1 MW
Maximum State of Charge (SOC):	100%
Minimum State of Charge (SOC):	0%
Ramp Rate Range:	Discharging: 0 MW/minute to 999 MW/minute Charging: 0 MW/minute to -999 MW/minute
Annual Cycles:	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)
Daily Dispatch Limits:	Equal to the Storage Contract Capacity for such day multiplied by four (4) hours
Maximum Time at Minimum Stored Energy Level:	No limit on Maximum Time at Minimum Stored Energy Level when grid power is available to the Facility
Grid Charging of Facility:	Yes

Other Operating Limits:	Seller is obligated to provide voltage support under the Interconnection Agreement.
Temperature Derates:	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 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

- ○ 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

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

What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

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

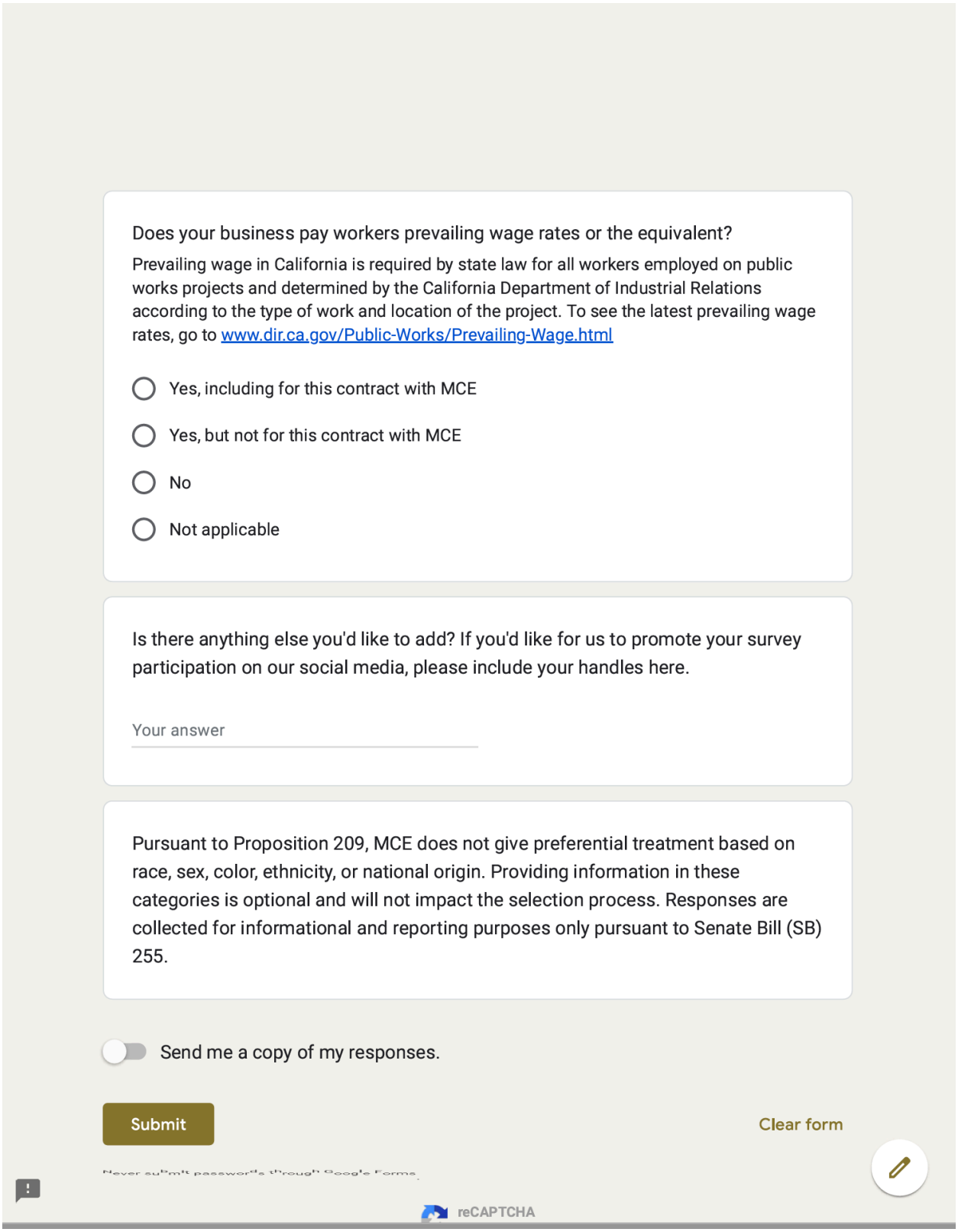
Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements?

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

- 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.

reCAPTCHA

MCE Empowering Our Clean Energy Future

CONTRA COSTA | MARIN | NAPA | SOLANO

Energy Storage Service Agreement with Cormorant Energy Storage, LLC

MCE Technical Committee | December 1, 2023

Overview of Today's Presentation

- Open Season Overview
- Cormorant Energy Storage, LLC – Project Overview
- Recommendation
- Q/A

Open Season 2023 Overview

- **Goals**
  - Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
  - Add Resource Adequacy (RA) supply to the portfolio
  - Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040
- **Product Types**
  - Renewable Product Content Category 1 energy (PCC1)
  - Paired & stand-alone energy storage

The Path to MTR Compliance

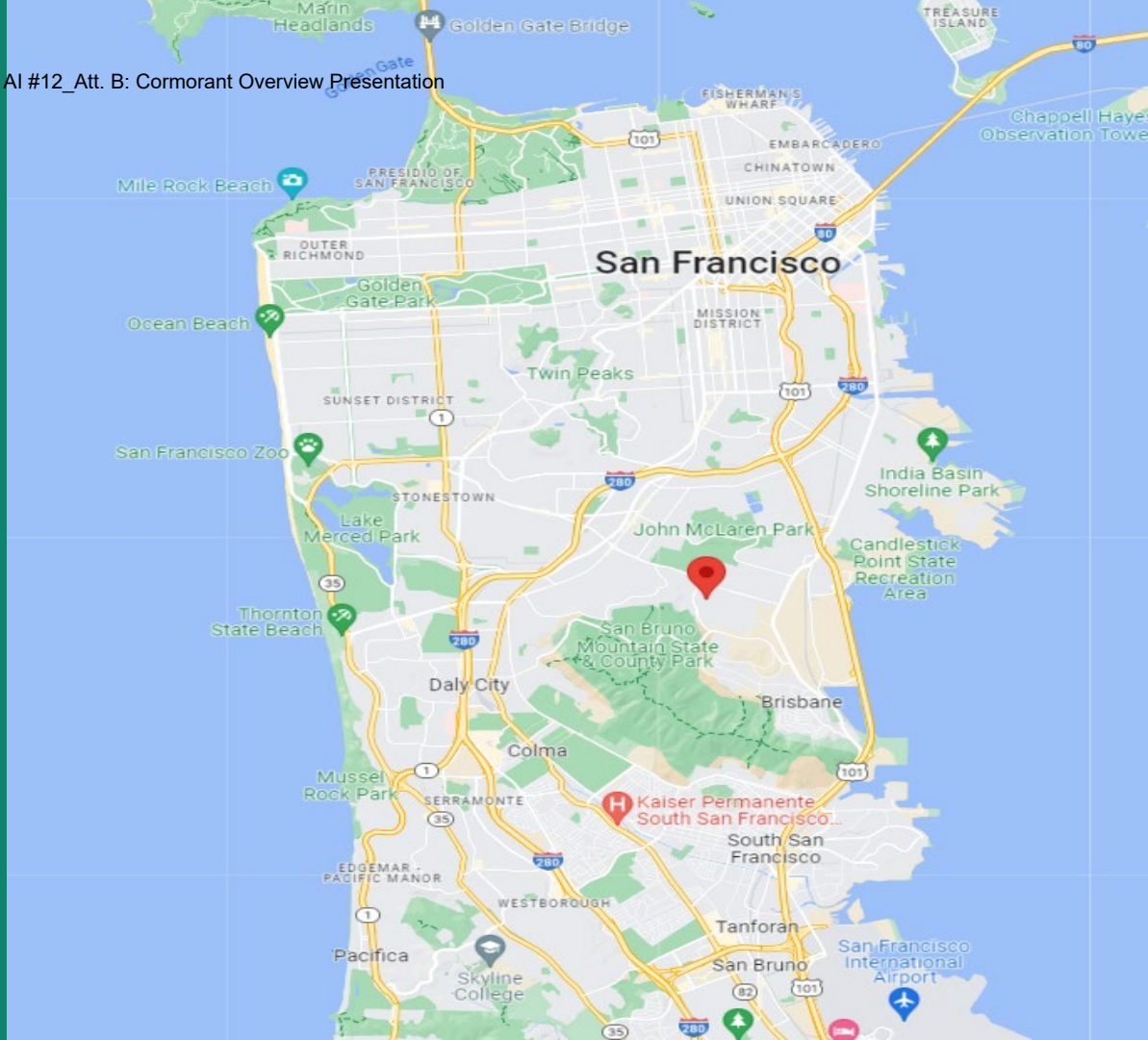
Bucket	Requirements	MCE's Obligation	Online Date	Eligible Resource Types	Resources for MCE's Compliance
Generic	• Resource Adequacy (RA)	353 MW	Part 1 - 8/23 Part 2 - 6/24 Part 3 - 6/26 Part 4 - 6/27	• PV+ 4 Hour Storage • Stand-Alone Storage • Wind • Geo or Biomass • Long-Term Imports	• Daggett - 8/23 • Humidor - 4/24 • Cormorant (Arevon)- 6/26 • Corby (NextEra) - 6/27
DCPP Replacement (5 Hour)	• Zero emissions or RPS • 5MWh / 1 MW (HE18 - HE22)	72 MW	6/1/25	• PV + Storage • Geo/Bio/Landfill Gas • Demand Response	• Golden Fields - 6/25
Long Duration Storage (8 Hour)	• 8 Hours - full capacity discharge	29 MW	6/1/28	• Stand-Alone Storage	• Key (NextEra) - 4/27
Clean-Firm (Geo/Bio)	• Firm • 80 % capacity factor • Not weather dep or use limited • Zero emissions or RPS	29 MW	6/1/28	• Geothermal • Biomass/Landfill Gas	• Humboldt House - 6/25 • Geysers - 6/25

Project Overview

- Stand-alone battery energy storage project located in San Mateo County, CA
- 130 MW / 4-hour discharge capacity
- Owned and operated by Arevon Energy

Fifth Standard Energy Storage
Fresno County, CA

- Full-toll contract includes energy, RA capacity and ancillary services
- Online date: 6/1/2026
- 15-year term
- No credit/collateral obligations for MCE



Notable Terms & Conditions

- Financial incentives for performance
- Union labor requirement
- Security deposit to ensure milestones are met
- Seller would make a one-time contribution of up to $500,000 to community benefit initiatives
- RA delivery guarantee
- Fixed price over the contract term with no annual escalation

Recommendation

Approve:

Energy Storage Service Agreement between

MCE and Cormorant Energy Storage, LLC

Rationale:

- The project type, size, specifications and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- Project is at a mature stage of development and will be constructed by a sophisticated counterparty with a successful track record.
- Full toll battery project provides additional benefits including portfolio balancing and flexibility for hourly accounting.
- Procuring now provides certainty in an uncertain market for resource adequacy.

Thank You!

Paul Krebs
Power Procurement Manager
pkrebs@mceCleanEnergy.org

MCE Empowering Our Clean Energy Future

CONTRA COSTA | MARIN | NAPA | SOLANO