

## WSPP CONFIRMATION

### ACS ENERGY AND/OR CARBON FREE ENERGY

This confirmation (“**Confirmation**”) confirms the transaction (“**Transaction**”) between [PURCHASER NAME AND LEGAL ENTITY] (“**Purchaser**”) and Marin Clean Energy, a California joint powers authority (“**MCE**” or “**Seller**”), each individually a “**Party**” and together the “**Parties**,” effective as [DATE] (“**Effective Date**”). This Transaction is governed by the WSPP Agreement, the current version of which is effective dated October 21, 2024 (the “**Master Agreement**”). The Master Agreement, WSPP Service Schedule C, and this Confirmation shall be collectively referred to herein as the “**Agreement**” and will constitute a single agreement between the Parties with respect to the Transaction and supersede and replace any prior oral or written confirmation regarding the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule C, or the CAISO Tariff. In the event of a conflict between the provisions of the Master Agreement and this Confirmation, this Confirmation shall control.

|                            | Purchaser  | Seller   |
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| <b>Contact Information</b> | [Purchaser Name]<br>[Address]<br>[Address]<br><br>Attn: [ ]<br>Phone: [ ]<br>Email: [ ]  | Marin Clean Energy<br>1125 Tamalpais Avenue<br>San Rafael, CA 94901<br><br>Attn: Contract Administration<br>Phone: (415) 464-6010<br>Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a> |
| <b>Product</b>             | <p>“<b>Product</b>” means:</p> <p><input type="checkbox"/> ACS Energy</p> <p><input type="checkbox"/> Carbon Free Energy</p> <p>ACS Energy and/or Carbon Free Energy, each in the amount of the Contract Quantity produced by an ACS Source and/or Carbon Free Source, delivered in hourly or sub-hourly quantities at Seller’s discretion during the Delivery Period. Carbon Free Energy may be supplied in lieu of ACS Energy at Seller’s discretion at no additional cost to Purchaser.</p> <p>As used herein:</p> <p>“<b>ACS</b>” means “asset-controlling supplier,” as that term is defined in the Cap and Trade Regulations.</p> <p>“<b>ACS Energy</b>” means Energy delivered from an ACS Source, set forth on <u>Exhibit A</u>.</p> <p>“<b>ACS Source</b>” means a generation resource owned, operated, or exclusively marketed by an ACS.</p> <p>“<b>Cap and Trade Regulations</b>” means the Mandatory Greenhouse Gas Emissions Reporting regulations (California Code of Regulations Title 17, Subchapter 10, Article 2, including Sections 95100 et seq.) and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Article 5 ) promulgated by CARB, each as in effect on the Effective Date and as amended from time to time.</p> |  |

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|   | <p><b>“CARB”</b> means California Air Resource Board of the California Environmental Protection Agency.</p> <p><b>“Carbon Free Energy”</b> means Energy from a Carbon Free Source.</p> <p><b>“Carbon Free Source”</b> means any generation resource set forth in <u>Exhibit A</u> that is a (i) hydroelectric generation resource located within the Western Energy Coordinating Council (“WECC”) area, (ii) registered with CARB, and (iii) recognized by CARB as having an Emissions Factor (as defined by CARB) of zero applicable to the Delivery Period, (iv) and is not a nuclear generating facility; provided, however, that <u>Exhibit A</u> may be updated or replaced by Seller to add additional generation resources by email notification to Purchaser so long as such generation resources added by Seller meet the criteria in parts (i) through (iv) of this definition.</p>  |
| <b>Contract Quantity</b>                | <p>The “Contract Quantity” shall be as follows:<br/>[ ] MWh</p> <p>The Contract Quantity is WSPP Schedule C Firm Energy generated outside the metered boundaries of a California balancing authority area and delivered to the Delivery Point during the Delivery Period. Unless specified herein, Seller may deliver the Product, any combination of Carbon Free Energy and/or ACS Energy, during any hours and in any hourly or sub-hourly quantity so long as Seller delivers the full Contract Quantity for a calendar year by the end of such calendar year.</p> <p>The quantity of Carbon Free Energy delivered to Purchaser in any hour will equal the lesser of (a) the hourly metered generation quantity of the Carbon Free Source(s) and (b) the actual hourly quantity allocated to Purchaser and delivered to the Delivery Point as determined by reference to the applicable E-Tag (the “<b>Lesser of Calculation</b>”).</p> |
| <b>Asset Controlling Supplier (ACS)</b> | <p>Asset Controlling Supplier Provisions: The Parties agree this Transaction provides for the delivery of WSPP Schedule C Energy with the ACS Emissions Factor specified in Exhibit C-SS attached hereto, sourced from [Insert Name of ACS] as shown on the E-Tag.</p> <p>Seller shall ensure the E-Tag includes the CARB ID ARB ID [#XXXX] and qualifies as energy with the [ACS Source]-specified ACS Emissions Factor. The Parties further agree this Transaction includes the WSPP Exhibit C-Specified Source (C-SS) provisions set forth in Exhibit C-SS attached hereto.</p>   |
| <b>Delivery Period</b>                  | [Month Day, Year] through December 31, 2025, inclusive   |
| <b>Contract Price</b>                   | <p><b>“Contract Price”</b> is equal to (a) the sum of (i) the Energy Price and (ii) either the Carbon Free Premium or ACS Premium, as applicable, minus (b) the CAISO Credit.</p> <p>As used herein:</p> <p><b>“ACS Premium”</b> is equal to \$[ ]/MWh.</p> <p><b>“CAISO Credit”</b> means the Energy Price paid by the CAISO for the Carbon Free Energy or ACS Energy (as applicable).</p> <p><b>“Carbon Free Premium”</b> is equal to \$[ ]/MWh.</p> <p><b>“Energy Price”</b> means, for each MWh of Carbon Free Energy or ACS Energy delivered (as applicable), the applicable Locational Marginal Price, as defined in the CAISO</p>   |

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|                              | <p>Tariff and published by CAISO, at the CAISO point where CAISO models the physical injection of such energy.</p> <p>For the avoidance of doubt, the Parties agree that the Energy Price and the CAISO Credit for each month shall net to zero dollars (\$0.00).</p> <p>For each month during the Delivery Period, Purchaser will pay Seller an amount equal to the portion of the Contract Quantity delivered in such month, if any, multiplied by the Contract Price.</p>  |
| <b>Delivery Point</b>        | The Product may be delivered to any point on the CAISO system or any balancing authority inside the boundaries of the State of California.  |
| <b>Delivery Rate</b>         | The Product shall be delivered to the Delivery Point on a day-ahead or hour-ahead firm basis, in its discretion. One hundred percent (100%) of the Product shall be from an ACS and/or Carbon Free Source.  |
| <b>Scheduling</b>            | <p>During the Delivery Period, Seller or Seller's designee, will perform all scheduling requirements for this Transaction. The Product shall be scheduled into the CAISO to the Delivery Point on a day-ahead, hour-ahead, and/or real-time basis. The Product will not be scheduled using an Inter-SC Trade, as such term is defined in the CAISO Tariff. Seller, or Seller's designee, shall perform all necessary tagging requirements for this Transaction and import the Product into the CAISO.</p> <p>Seller, or its designee, shall be the electricity importer for purposes of California Global Warming Solutions Act Cap and Trade Regulations. The Parties acknowledge that Seller, or its designee, will be responsible for satisfying the Compliance Obligation under the Cap and Trade Regulations associated with any imported ACS Energy or Carbon Free Energy that Seller schedules and delivers under this Confirmation, and Seller is responsible for all costs and actions with the Cap and Trade Regulations as related to this Transaction.</p> <p>Title to the ACS energy or Carbon Free Energy associated with the Product shall be deemed to pass from Seller to Purchaser at the Delivery Point.</p> <p>The above scheduling obligations of Seller shall be performed consistent with all applicable CAISO, WECC, and other relevant authority (e.g., BPA) scheduling protocols, and Seller shall be liable for any failure to comply with such protocols.</p> |
| <b>Payment and Invoicing</b> | <p>For each month during the Delivery Period, Purchaser shall pay Seller an amount equal to the Contract Quantity of Product that is delivered to the Purchaser in accordance with this Confirmation during such month multiplied by the Contract Price.</p> <p>The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the later of (a) the twentieth (20th) day of the month in which Seller delivered such invoice, and (b) ten (10) days after Purchaser's receipt of Seller's invoice; provided that if such day is not a Business Day, then on the next Business Day.</p>  |
| <b>Credit Requirements</b>   | Unless Purchaser has a Credit Rating of BBB- from S&P or Baa3 from Moody's (or has provided a guaranty in a form acceptable to Seller from a guarantor with such Credit Rating), Purchaser shall deliver Performance Security to Seller within ten (10) Business Days of the Effective Date in an amount equal to the Required Amount. Purchaser shall maintain Performance Security with Seller through the Delivery Period, and the   |

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|   | <p>Performance Security shall be returned to Purchaser within thirty (30) days of completion of the Delivery Period, subject to any reductions permitted under this Confirmation.</p> <p>As used in this Confirmation:</p> <p>“<b>Credit Rating</b>” 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 issues rating by S&amp;P, Moody’s or any other rating agency agreed by the Parties.</p> <p>“<b>Letter(s) of Credit</b>” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, with such bank having a credit rating of at least A- from S&amp;P or A3 from Moody’s, which letter of credit shall be in a form acceptable to Purchaser.</p> <p>“<b>Performance Security</b>” means (i) cash or (ii) a Letter of Credit in an amount equal to the Required Amount.</p> <p>“<b>Required Amount</b>” means an amount equal to thirty percent (30%) of the total notional value (i.e., the Contract Price multiplied by the aggregate Contract Quantity).</p> <p>Except as provided above, neither Party shall be required to post collateral or other security for this Transaction notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27.</p>  |
| <p><b>Representations, Covenants and Warranties</b></p> | <p>Seller represents, covenants and warrants to Purchaser that:</p> <ul style="list-style-type: none"> <li>(i) Seller has the right to sell the Product and sufficient capacity from an ACS or Carbon Free Source (or collection of Carbon Free Sources) has been committed to fulfill its Product delivery obligations under this Confirmation;</li> <li>(ii) Seller has not sold the Product to be transferred to Purchaser to any other person or entity;</li> <li>(iii) Product committed to be purchased and sold pursuant to this Confirmation is not committed to another party, and Seller will not withhold or otherwise reduce deliveries of such Product to sell to another entity or party;</li> <li>(iv) The Product is free and clear of all liens or other encumbrances;</li> <li>(v) Without limiting Seller’s other obligations herein, upon reasonable request from Purchaser, Seller agrees to provide Purchaser with an attestation confirming that Seller delivered the portion of the Contract Quantity of Carbon Free Energy and/or ACS Energy that was invoiced to Purchaser in the prior calendar year and, for Carbon Free Energy, that Seller, or its designee, has performed the Lesser of Calculation and confirmed that the metered quantity of Carbon Free Energy delivered under this Confirmation does not exceed the E-Tags associated with such deliveries;</li> <li>(vi) Upon request of Purchaser, Seller will cooperate and work with Purchaser, the California Energy Commission (CEC), the California Public Utilities Commission (CPUC), the California Air Resources Board (CARB), or any other Governmental Authority to provide any documentation as Purchaser may reasonably request from time to time in accordance with Purchaser’s reporting activities or requirements</li> </ul> |

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|                               | <p>and/or compliance requirements related to any Governmental Authority in connection with the Product, including without limiting the foregoing obligations:</p> <ul style="list-style-type: none"> <li>a. Seller will cooperate and work with Purchaser and/or the CEC to provide any documentation required by the CEC to satisfy Purchaser’s obligations pursuant to the Regulations Governing the Power Source Disclosure Program (Title 20, California Code of Regulations, Section 1390-1394.2, as currently in effect and as may be amended or revised from time to time;</li> <li>b. Seller will cooperate and work with Purchaser and/or CARB to provide any documentation required by CARB to satisfy Purchaser’s obligations pursuant to the Regulations for the Mandatory Reporting of Greenhouse Gas Emissions (MRR) (Title 17, California Code of Regulations, Section 95100 <i>et seq.</i>), as currently in effect and as may be amended or revised from time to time.</li> </ul> <p>(vii) If an ACS or Carbon Free Source has an agreement to dynamically transfer electricity to a California Balancing Authority, the transactions implemented under this Confirmation are not contrary to the condition imposed by a balancing authority participating in the dynamic transfer arrangement.</p>   |
| <p><b>Confidentiality</b></p> | <p>Purchaser acknowledges that Seller is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 7920 <i>et seq.</i>). Each Party (a “<b>Receiving Party</b>”) acknowledges that the other Party (a “<b>Disclosing Party</b>”) may submit information to the Receiving Party that Disclosing Party considers confidential, proprietary, trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 <i>et seq.</i>), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Upon request or demand of any third person or entity not a party to this Agreement (“<b>Requestor</b>”) for production, inspection and/or copying of information designated by a Disclosing Party’s Confidential Information, the Receiving Party as soon as practical (shall notify the Disclosing Party that such request has been made, by email to the contact information provided above. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within 5 Business Days after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.</p> <p>If required by any law, statute, ordinance, a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to legal counsel, accountants, representatives, agents, directors, advisors, regulators, lenders, financing entities, employees and other representatives of the Party who have a need to know such Confidential Information related to this Agreement. For additional clarity, Parties acknowledge that either Party may be obligated to provide Confidential Information to the CPUC, the CEC, the CAISO, and the CARB for regulatory compliance purposes, and either Party may disclose the terms and conditions of this Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, the CARB, and any other Governmental Authority. Both Parties waive any prior</p> |

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|  | notice requirement and authorizes such disclosures to the CPUC, the CAISO, the CARB, and the CEC.  |
| <b>Change in Law</b>   | Upon written request of Purchaser, Seller shall make commercial reasonable efforts to obtain compliance with any applicable change in law related to the Product occurring after the Effective Date, including reasonably requested amendments to this Confirmation; provided, however, that notwithstanding any provision herein to the contrary, Seller shall not be obligated to make any changes in connection with this provision that would have a materially adverse effect on Seller, or result in a reduction in revenues under this Confirmation, or require Seller to incur more than \$5,000 of unreimbursed costs to comply with this provision.  |
| <b>Governing Law</b>   | Section 24 of the WSPP Agreement is deleted and replaced with the following:<br>“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.”   |
| <b>No Recourse to Members of Purchaser</b>                   | Seller 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, <i>et seq.</i> ) and is a public entity separate from its constituent members. Seller will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Purchaser will have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Seller or Seller's constituent members, in connection with this Confirmation.  |
| <b>Entire Agreement; No Oral Agreements or Modifications</b> | This Confirmation sets forth the terms of the transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.   |
| <b>Counterparts</b>  | This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.  |
| <b>Amendments to the WSPP Agreement</b>                      | For this Transaction, the WSPP Agreement shall be amended as follows:<br>(a) Section 9.4 is deleted in its entirety and replaced with the following:<br>“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, with notice of the objection given to the other Party. 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 two (2) Business Days of such resolution along with interest |

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|  | <p>accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”</p> <p>(b) Sections 21.3(a)(1) and (a)(2) are amended by deleting each instance of the word “hourly”.</p> <p>(c) Section 22.1 is modified by inserting the following new text at the end thereof:</p> <p>“(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party’s admission in a writing that is unable to pay its debts generally as they become due;</p> <p>(g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors; or</p> <p>(h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets.”</p> <p>(d) Section 22.2(b) is amended by inserting “and is continuing” after “Event of Default occurs” in the first line thereof and deleting the second sentence therein.</p> <p>(e) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following:</p> <p>“If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary.”</p> <p>(f) Section 22.3(e) is deleted in its entirety and replaced with the following: “[Intentionally omitted]”</p> <p>(g) Section 22.3(f) is deleted in its entirety and replaced with the following:</p> <p>“If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to dispute resolution pursuant to Section 34.”</p> <p>(h) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Effective Date.</p> <p>(i) Section 30.1(4) is amended by inserting “or requested” after the word “required” and by adding the following at the end of the first sentence: “; or (8) to the Party’s and</p> |
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|  | <p>such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.</p> <p>(j) Section 30.1(6) is amended by inserting at the end thereof prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.</p> <p>(k) Subsections 34.1 and 34.2 are hereby deleted and replaced with the following:</p> <p>“34.1 <u>DISPUTE RESOLUTION</u></p> <p>IN THE EVENT OF ANY DISPUTE ARISING UNDER THE AGREEMENT WITH RESPECT TO THIS TRANSACTION, 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 THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THE AGREEMENT.”</p> <p>“34.2 <u>EXCLUSIVE JURISDICTION</u></p> <p>EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN MARIN COUNTY, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”</p> <p>(l) In Section 34.4, the phrase “arbitration or” is hereby deleted from the first line.</p> <p>(m) The following shall be inserted as a new Section 34.5:</p> <p>“34.5 <u>LIMITATION OF DAMAGES</u></p> <p>EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY</p> |
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|                           | <p>NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”</p> <p>(n) Section 37 is amended by inserting the following at the beginning thereof: “On the date of entering into this Confirmation,”.</p> <p>(o) Section 41 “Witness” shall become Section 42 and the following “FERC Standard of Review; Mobile-Sierra Waiver” Section shall be substituted in its place:</p> <p>“The Parties agree as follows:</p> <p>From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:</p> <p>(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting <i>sua sponte</i>, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in <i>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</i>, 350 U.S. 332 (1956) and <i>Federal Power Commission v. Sierra Pacific Power Co.</i>, 350 U.S. 348 (1956) and clarified by <i>Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish</i>, 554 U.S. 527 (2008), and <i>NRG Power Marketing LLC v. Maine Public Utility Commission</i>, 558 U.S. 527 (2010).</p> <p>(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”</p> |
| <p><b>Definitions</b></p> | <p>“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.</p> <p>“CARB” means the California Air Resources Board or any successor entity performing similar functions.</p> <p>“CEC” means the California Energy Commission or its successor in function.</p> <p>“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.</p>  |

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|  | <p>“<b>CPUC</b>” means the California Public Utilities Commission or any successor entity performing similar functions.</p> <p>“<b>E-Tag</b>” has the meaning set forth under the CAISO Tariff.</p> <p>“<b>Governmental Authority</b>” means the United States, a State thereof, and political subdivision or governmental body thereof, including any department or agency, with jurisdiction over Purchaser.</p> |
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**This Confirmation is subject to the Exhibits identified below and attached hereto:**

**Exhibit A – Generating Facilities**

**Exhibit B – Form of Hourly Meter and E-Tag Reconciliation Report**

**Exhibit C - Exhibit C-SS**

*[Signatures appear on the following page.]*

**ACKNOWLEDGED AND AGREED TO AS OF THE EFFECTIVE DATE:**

**[PURCHASER]**

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

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

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

**EXHIBIT A**

**CARBON FREE ENERGY SOURCES**

| Generation Resource Name | State | County | Host Balancing Authority | Technology | CARB ID | EIA Plant ID | CAISO Resource ID (if applicable) | CEC RPS ID (if applicable) | EIA Plant ID | Emissions Factor (MT CO <sub>2</sub> e per MWh) |
|--------------------------|-------|--------|--------------------------|------------|---------|--------------|-----------------------------------|----------------------------|--------------|---|
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**ASSET CONTROLLING SUPPLIERS**

| Name                       | CARB ID | Emission Factor (MT CO <sub>2</sub> e per MWh) |
|----------------------------|---------|--|
| Tacoma Power               | 104567  |  |
| Bonneville Power Authority | 4000    |  |

Parties agree that Exhibit A may be updated or replaced as allowed under the “Product” section of this Confirmation.

**EXHIBIT B**

**FORM OF HOURLY METER AND E-TAG RECONCILIATION REPORT**

| Hourly Comparison for Energy Scheduled into a California Balancing Authority |             |                 |                             |                         |                                     |   |                                 |   |
|--|-------------|-----------------|-----------------------------|-------------------------|-------------------------------------|---|---------------------------------|---|
| Date   | Hour Ending | E-Tag ID Number | Hourly Final Schedule (MWh) | Hourly Meter Data (MWh) | Percent Share of Final Schedule (%) | Percent Share of Facility Generation Output (%) | RPS Contract ID (If applicable) | Preliminary Estimate of Eligible PCC 1 Volume (MWh) (If applicable) |
|  |             |                 |                             |                         |                                     |   |                                 |   |
|  |             |                 |                             |                         |                                     |   |                                 |   |
|  |             |                 |                             |                         |                                     |   |                                 |   |
|  |             |                 |                             |                         |                                     |   |                                 |   |
|  |             |                 |                             |                         |                                     |   |                                 |   |

EXHIBIT C-SS

SPECIFIED SOURCE

CONFIRMATION ATTACHMENT

|   |
|---|
| <b>a. Identity of Source:</b>   |
| The following (i) facility, generator, unit or (ii) ACS system ("Source"): <b>ACS System</b>  |
| Source CARB IDs, if applicable and available: <b>ARB ID #XXXX or ARB ID #XXXXXX</b>   |
| California Energy Commission RPS ID, if Source is an ERR: <b>N/A</b>  |
| WREGIS ID#, if applicable: <b>N/A</b>   |
| <b>b. Source EF<sub>sp</sub>:</b>   |
| The [INSERT ACS SUPPLIER] 2025 ACS Emission Factor (Reported in 2026) posted on the California Air Resources Board website.<br><a href="https://ww2.arb.ca.gov/mrr-acs">https://ww2.arb.ca.gov/mrr-acs</a>  |
| <b>c. Carbon Adjustment (rapid settlement if Seller delivers higher emissions factor energy than agreed):</b> Carbon Adjustment <b><u>applies unless</u></b> the following box is checked:  |
| <input type="checkbox"/> Carbon Adjustment <b><u>does not</u></b> apply and instead of Carbon Adjustment, Seller shall compensate Purchaser as follows, in addition to Purchaser's remedies in Section 21 of the WSPP Agreement, if Seller fails to schedule and deliver energy from the Source unless excused pursuant to the terms of the applicable Schedule or this Confirmation:<br><i>[e.g., fixed damages of \$0, \$2, or % of Carbon Adjustment.]</i> |
| <b>d. EF True-Up (full indemnity for difference between agreed and CARB-assigned emissions factors, settled after verification):</b> EF True-Up <b><u>does not apply unless</u></b> one or more of the following boxes that are checked cause a change to EF <sub>sp</sub> or EF <sub>asn</sub> :   |
| <input type="checkbox"/> Change in generator operations or fuel source.<br><input type="checkbox"/> Prospective or retroactive change in law (including AB32).<br><input type="checkbox"/> Other, as follows:<br><input type="checkbox"/> All other circumstances.<br><input type="checkbox"/> EF True Up damages are limited as follows: <i>[e.g., caps]</i>   |
| <b>e. RECs Disclosure (not applicable for an ACS system Source):</b> Seller represents and warrants that the <b>Source is not an ERR</b> , <b><u>unless</u></b> the box is checked below. This is a disclosure, not an option, and failure to check this box does not excuse performance if the Source is or becomes an ERR.  |
| <input type="checkbox"/> The Source is an ERR, and Section 6.c therefore applies.   |
| <b>f. Regulation Incorporation:</b> This transaction is <b><u>not</u></b> Regulation Incorporation <b><u>unless</u></b> the following box is checked:   |
| <input type="checkbox"/> This transaction is Regulation Incorporation and Section 6.e applies.  |
| <b>g. Additional provisions:</b>  |
|   |