



MCE Technical Committee Meeting
Friday, September 5, 2025
10:00 a.m.

1125 Tamalpais Avenue, San Rafael, CA 94901
2300 Clayton Road, Suite 1500, Concord, CA, 94520

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

Remote Public Meeting Participation

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

Phone: Dial (669) 900-9128, Meeting ID: 828 5103 7385, Passcode: 142534

*Materials related to this agenda are available for physical inspection at MCE's
offices in San Rafael at 1125 Tamalpais Ave, San Rafael, CA 94901
and in Concord at 2300 Clayton Road Suite 1500, Concord, CA 94520.*

This Committee may be attended by Board Members who do not serve on this Committee. In the event that a quorum of the entire Board is present, this Committee shall act as a Committee of the Whole. Any item acted upon by the Committee of the Whole will be considered advisory to the Board of Directors and require consideration and action by the Board of Directors at a noticed Board meeting before adoption or approval of the item.

DISABLED ACCOMMODATION: If you are a person with a disability who requires an accommodation or an alternative format, please contact MCE at (888) 632-3672 or ada-coordinator@mceCleanEnergy.org at least 72 hours before the meeting start time to ensure arrangements are made.

Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Operations Officer (Discussion)
5. Consent Calendar (Discussion/Action)

Agenda Page 2 of 2

C. 1. Approval of 6.6.25 Meeting Minutes

C.2. 2024 MCE Power Source Disclosure Attestation

6. Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC (Discussion/Action)
7. Amended Virtual Power Plant Tariff (Discussion/Action)
8. Committee & Staff Matters (Discussion)
9. Adjourn

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

DRAFT
MCE TECHNICAL COMMITTEE MEETING MINUTES
Friday, June 6, 2025
10:00 A.M.

Present: Stephanie Andre, City of Larkspur
Dion Bailey, City of Hercules
Devin Murphy, City of Pinole
Charles Palmares, City of Vallejo, joined at 10:14am
Cesar Zepeda, City of Richmond, joined at 10:25am

Absent: Gabe Quinto, City of El Cerrito
Amanda Szakats, City of Pleasant Hill

**Staff
& Others:** Melanie Biesecker, Senior Customer Programs Manager
Jesica Brooks, Lead Board Clerk and Executive Assistant
Vidhi Chawla, VP of Power Resources
Paul Krebs, Senior Power Procurement Manager
Alice Havenar-Daughton, VP of Customer Programs
Caroline Lavenue, Legal Counsel II
Tanya Lomas, Board Clerk Associate
Stephen Mariani, Senior Power Procurement Manager
Alexandra McGee, VP of Strategic Initiatives
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Coordinator
Justine Parmelee, VP of Internal Operations
Bill Pascoe, Senior Power Procurement Manager
Zae Perrin, VP of Customer Operations
Mike Rodriguez-Vargas, Internal Operations Assistant
Enyonam Senyo-Mensah, Internal Operations Manager
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Murphy called the regular Technical Committee meeting to order at 10:16 a.m. with quorum established by roll call.

2. Board Announcements (Discussion)

Comments were made by Chair Murphy.

3. Public Open Time (Discussion)

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

DRAFT

4. Report from Chief Executive Officer (Discussion)

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

5. Consent Calendar (Discussion/Action)

C.1 Approval of 4.4.25 Meeting Minutes

C.2 Amended Electric Schedule EST- Energy Storage Tariff

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

Action: It was M/S/C (Bailey/Palmares) to **approve Consent Calendar item C.1 and C.2.** Motion carried by unanimous roll call vote. (Absent: Quinto and Szakats).

6. MCE Dynamic Rates Pilot (Discussion)

Alice Havenar-Daughton, VP of Customer Programs, and Melanie Biesecker, Senior Customer Programs Manager, presented this item and addressed questions from Committee members.

Chair Murphy opened the public comment period and comments were made by member of the public Dan Segedin.

Action: No action required.

7. Request for Information for New MCE Power Supply Resources (Discussion)

Bill Pascoe, Senior Power Procurement Manager, presented this item and several staff addressed questions from Committee members.

Chair Murphy opened the public comment period and comments were made by member of the public Dan Segedin.

Action: No action required.

8. Committee & Staff Matters (Discussion)

Comments were made by Director Zepeda.

9. Adjournment

Chair Murphy adjourned the meeting at 11:24 a.m. to the next scheduled Technical Committee Meeting on July 4, 2025.

DRAFT

Devin Murphy, Chair

Attest:

Dawn Weisz, Secretary



September 5, 2025

TO: MCE Technical Committee

FROM: Stephen Mariani, Senior Power Procurement Manager

RE: 2024 MCE Power Source Disclosure Attestation (Agenda Item #05 C.2)

Dear Technical Committee Members:

Summary:

California Public Utilities Code requires all retail sellers of electric energy, including MCE, to disclose “accurate, reliable, and simple-to-understand information on the sources of energy, and the associated emissions of greenhouse gasses, that are used to provide electric services.”¹ Applicable regulations direct retail sellers to provide such communications to customers following each year of operation. The format for this communication, named the Power Content Label (PCL) by the California Energy Commission (CEC), is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. Similar to the presentation of information on a nutritional label, the PCL informs retail electricity customers of the power sources that were procured to serve their electric energy needs. Prior to distributing the PCL to its customers, MCE annually submits a report to the CEC detailing specified-source power purchases for each retail service offering that was made available during the previous year. The annual report and the PCL are required elements of California’s Power Source Disclosure (PSD) Program. The information reflected in each annual report is contributory to the PCL, which is prepared by the CEC, and later returned to each retail seller, in consideration of the information reflected in its annual PSD report.

Information presented in the PCL will include the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. If a retail seller meets a certain percentage of its resource needs from unspecified resources/purchases, the report must identify such purchases as “unspecified sources of power.” Based on MCE’s specified-source power purchases in 2024, which were sufficient to serve all retail energy requirements of MCE customers, there were no unspecified sources of power reflected amongst MCE’s four distinct retail service offerings.

During the 2024 calendar year, MCE successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal, hydroelectricity, biomass and landfill gas-to-energy. For Light Green customers, the

¹ California Public Utilities Code Section 398.1(b)

percentage of supply attributable to renewable energy sources exceeded 70 percent of the total, with 100 percent of total Light Green energy purchases sourced from zero- or low-carbon sources. For the Deep Green, Local Sol and Green Access retail service offerings, CEC-certified renewable resources were the exclusive sources of energy procured to serve participating customers.

Deep Green PSD Statistics

Deep Green	Portfolio Totals	PCL Data
Retail Sales	526160	
Total Specified	526160	
Biomass & Biogas	0	0%
Geothermal	0	0%
Eligible Hydroelectric	0	0%
Solar	263080	50%
Wind	263080	50%
Large Hydroelectric	0	0%
Nuclear	0	0%
Emerging Technologies	0	0%
Other	0	0%
Natural Gas	0	0%
Coal & Petroleum	0	0%
Unspecified Power - ACS	0	
Unspecified Power - Spot Market	0	
Unspecified Power - Total	0	0%
Total PCL GHGs (MT CO₂e)	0.0	
Emissions intensity (MT CO₂e/MWh)	0.000	
PCL GHG Intensity (lbs CO₂e/MWh)		0
Unbundled REC %		0%

Local Sol PSD Statistics

LocalSol	Portfolio Totals	PCL Data
Retail Sales	1507	
Total Specified	1507	
Biomass & Biogas	0	0%
Geothermal	0	0%
Eligible Hydroelectric	0	0%
Solar	1507	100%
Wind	0	0%
Large Hydroelectric	0	0%
Nuclear	0	0%
Emerging Technologies	0	0%
Other	0	0%
Natural Gas	0	0%
Coal & Petroleum	0	0%
Unspecified Power - ACS	0	
Unspecified Power - Spot Market	0	
Unspecified Power - Total	0	0%
Total PCL GHGs (MT CO ₂ e)	0.0	
Emissions intensity (MT CO ₂ e/MWh)	0.000	
PCL GHG Intensity (lbs CO ₂ e/MWh)		0
Unbundled REC %		0%

Light Green PSD Statistics

LightGreen	Portfolio Totals	PCL Data
Retail Sales	5005765	
Total Specified	5005765	
Biomass & Biogas	95828	2%
Geothermal	93209	2%
Eligible Hydroelectric	207361	4%
Solar	2225116	44%
Wind	845644	17%
Large Hydroelectric	1538607	31%
Nuclear	0	0%
Emerging Technologies	0	0%
Other	0	0%
Natural Gas	0	0%
Coal & Petroleum	0	0%
Unspecified Power - ACS	0	
Unspecified Power - Spot Market	0	
Unspecified Power - Total	0	0%
Total PCL GHGs (MT CO₂e)	3305.9	
Emissions intensity (MT CO₂e/MWh)	0.001	
PCL GHG Intensity (lbs CO₂e/MWh)		1
Unbundled REC %		2%

Green Access PSD Statistics

GreenAccess	Portfolio Totals	PCL Data
Retail Sales	12221	
Total Specified	12221	
Biomass & Biogas	0	0%
Geothermal	0	0%
Eligible Hydroelectric	0	0%
Solar	12221	100%
Wind	0	0%
Large Hydroelectric	0	0%
Nuclear	0	0%
Emerging Technologies	0	0%
Other	0	0%
Natural Gas	0	0%
Coal & Petroleum	0	0%
Unspecified Power - ACS	0	
Unspecified Power - Spot Market	0	
Unspecified Power - Total	0	0%
Total PCL GHGs (MT CO₂e)	0.0	
Emissions intensity (MT CO₂e/MWh)	0.000	
PCL GHG Intensity (lbs CO₂e/MWh)		0
Unbundled REC %		0%

Consistent with applicable regulations, MCE will complete requisite customer communications after the organization receives its PCL from the CEC, which is expected to occur sometime prior to October 1, 2025. With the recent procedural change related to PCL preparation, retail sellers are required to post the 2024 PCL to their respective websites no later than October 1, 2025, and must distribute customer communications regarding the PCL by December 31, 2025.

While preparing MCE's 2024 annual PSD report, staff performed a detailed review of all power purchases completed during the 2024 calendar year. This review included an inventory of all renewable energy credit transfers within MCE's Western Renewable Energy Generation Information System (WREGIS) account, related contract documents, and pertinent transaction records associated with other specified energy purchases. Based on staff's review of available data, the information presented in the annual report was determined to be accurate.

To fulfill its obligations under the PSD Program, MCE must also provide the CEC with an attestation regarding the accuracy of information included in its PSD report for the 2024 operating year. Regarding this internally administered attestation process, applicable regulations state²:

*A retail supplier that is a public agency providing electric services is not required to comply with the provisions of subdivision (a)(1) if the board of directors of the public agency submits to the Energy Commission an attestation of the veracity of each annual resource report ~~and power content label~~ for the previous year.*³

Evidence of MCE's attestation must be provided to the CEC no later than October 1, 2025.

In consideration of MCE's internal review and applicable regulations, staff requests that the Technical Committee accept this determination of informational accuracy and, based on this staff-level determination and related recommendation, attest to the accuracy of information included in MCE's 2024 PSD report. Should the Technical Committee endorse staff's recommendation, a copy of this staff report and the meeting minutes for today's Technical Committee Meeting will be forwarded to the CEC and a copy of MCE's PCL will be posted to its website by October 1, 2025.⁴ Thereafter, and following distribution of its 2024 PCL to customers no later than December 31, 2025, MCE will have completed its obligations under the PSD Program for the 2024 calendar year.

Fiscal Impacts:

There are no fiscal impacts.

Recommendation:

Staff recommends the Technical Committee endorse the accuracy of information presented in MCE's 2024 PSD report.

² Note that California Code of Regulations Title 20, Div 2, Ch 3, Article 5, Section 1394.(a)(1), as referenced in the excerpt from applicable PSD regulations, refers to the completion of an annual independent audit containing summary of results and proof of service of the annual power content label to customers.

³ California Code of Regulations Title 20, Div 2, Ch. 3, Article 5, Section 1394(a)(2), as amended by Rulemaking to Amend Regulations Governing the PSD Program (Docket No: 21-OIR-01). Pursuant to the amended regulations and new procedures, the CEC will provide a PCL to each LSE following PSD Report submission.

⁴ Per California Code of Regulations Title 20, Div 2, Ch. 3, Article 5, Section 1393.1(b)(2).



September 5, 2025

TO: MCE Technical Committee

FROM: Paul Krebs, Senior Power Procurement Manager

RE: Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC (Agenda Item #06)

ATTACHMENTS: A. Renewable Power Purchase Agreement between MCE and Mulqueeney Wind Energy LLC Presentation
B. Renewable Power Purchase Agreement between MCE and Mulqueeney Wind Energy LLC (Redacted)

Dear Technical Committee Members:

Summary:

MCE staff received a bilateral offer from Mulqueeney Wind Energy LLC in the spring of this year for an 80 MW wind facility in Alameda County, CA.

The project is at a mature stage in the development process, with key milestones achieved, including full site control, signed interconnection agreement, full capacity deliverability status, and construction already underway.

Per the attached Renewable Power Purchase Agreement ("PPA"), MCE would have rights to both the Product Content Category 1 (PCC1) Renewable Energy and resource adequacy ("RA") capacity from Mulqueeney over a 20-year term.

The location of the facility would allow MCE to capture premium energy values from the California Independent System Operator ("CAISO") given its location and low risk of congestion. The project provides generation in hours beneficial to shaping MCE's supply curve to align with its load profile.

In addition, the project developer/owner Brookfield Renewables has designed the site and implemented state of the art technology to mitigate impacts to local and migratory avian species. This includes turbine micro-siting per consultation with avian experts and Alameda's Technical Advisory Committee. Turbines will be equipped with individual AI paired cameras to detect the presence of avian species which would trigger feathering / shut-off of specific turbines.

Rationale:

The PPA would be a good fit for MCE's portfolio based on the following considerations:

- Energy and RA capacity produced by the facility would complement MCE's existing portfolio of resources.

- The project would supply 167,181 megawatt-hours ("MWh") of Renewable Energy annually to MCE, equivalent to the annual electric needs of approximately 39,805 residential customers.
- The project would provide certainty through fixed-priced renewable energy and RA mitigating MCE's long-term market risk.
- The project is being developed and will be operated by an experienced team. Mulqueeney's parent company, Brookfield Renewables, operates a diverse portfolio of wind, solar, and energy storage totaling over 46,000 MW across five continents.

Facility / Contract Overview

- Facility Name: Mulqueeney Wind
- Facility Size/Type: 80 MW wind generation facility
- Products under Contract: PCC1 Renewable Energy, RA, Ancillary Services
- Price: Fixed with no escalation over the delivery term
- Project location: Alameda County, California
- Guaranteed Commercial Operation Date: October 2028
- Contract Term: 20 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor: Union contractors would be employed for all on-site construction trades
- Community Benefit Package: One-time payment of \$100,000 to MCE for community benefits on or before the delivery term start date

Fiscal Impacts:

There would be no impact on the Fiscal Year 2025/26 budget. Incremental costs and benefits would be accounted for starting in FY 2028/2029.

Recommendation:

Authorize execution of the Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC.



Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC

MCE Technical
Committee
September 5, 2025



Overview of Today's Presentation

- 2025 Procurement Goals and Target Resources
- Mulqueeney Wind Project Overview
- Renewable Power Purchase Agreement Overview
- Recommendation
- Q & A

2025 Procurement Goals and Target Resources

- Goals
 - Increase alignment of hourly load and supply profiles
 - Increase Product Content Category 1 (PCC1) Renewables Supply
 - Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
 - Add Resource Adequacy (RA) supply to the portfolio
- Target Resources
 - Renewable (PCC1) Energy
 - Renewable (PCC1) Energy paired with energy storage
 - Resource Adequacy (RA)

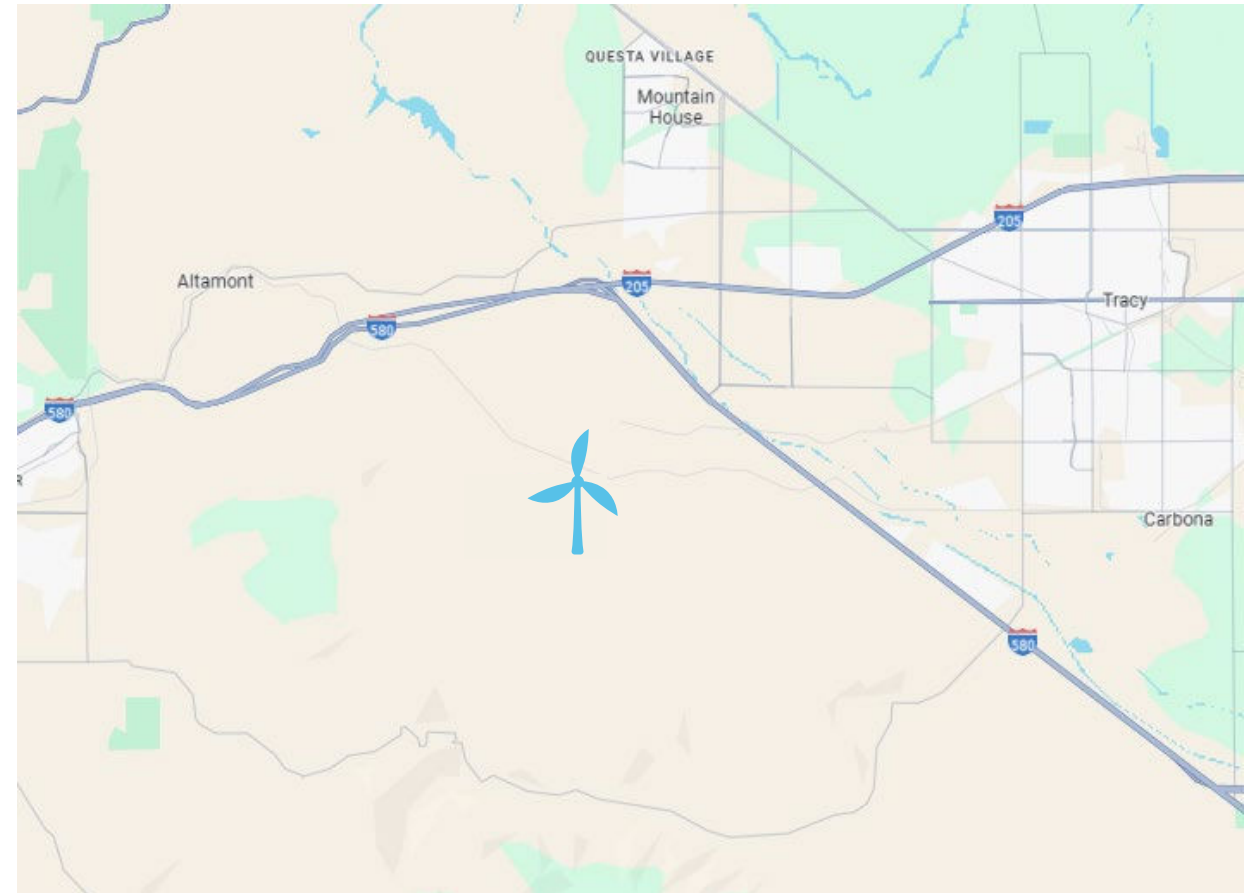
Mulqueeney Wind Project Overview

- Technology: Wind generation facility
- Location: Altamont Pass – Alameda County, CA
- Capacity: 80 MW
- Energy: 167 GWh/year
- Owner/Operator: Brookfield Renewables
- Status: Under construction
- Avian Impact Mitigation: Turbine micro-siting, AI enabled cameras integrated into turbine operations



Renewable Power Purchase Agreement Overview

- “Full-toll” contract
 - Product Content Category 1 (PCC1)
Renewable Energy
 - RA Capacity
- Delivery Term Start Date: 10/1/2028
- 20-year term
- No credit/collateral obligations for MCE



Notable Terms and Conditions

- Financial incentives for seller performance
 - Guaranteed energy production
 - RA delivery guarantee
 - Daily delay damages
- Project Labor Agreement, prevailing wage requirement, forced labor restriction
- Security deposits to ensure milestones are met
- \$100k Community Benefits contribution in one-time lump sum payment to MCE
- Fixed price over the contract term, no escalation

Recommendation

Approve:

Renewable Power Purchase Agreement between MCE and
Mulqueeney Wind Energy, LLC

Rationale:

- The project type, size, specifications, and location contribute towards MCE's long-term power portfolio needs.
- Project will be constructed and operated by an experienced counterparty with a successful track record including existing agreements with MCE.
- Procuring now provides certainty in an uncertain market for California-based PCC1 energy and resource adequacy.

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Mulqueeney Wind Energy LLC, a Delaware limited liability company (“**Seller**”)

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

Description of Facility: An 80 MW_{AC} renewable wind energy electricity generating facility, located in Alameda 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	180 days prior to Commercial Operation Date
Obtaining Federal and State Discretionary Permits	Complete
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	Complete
Execute Interconnection Agreement	Complete
Procure Major Equipment	Complete
Expected Construction Start Date	Complete
TPD Allocation	Complete
Full Capacity Deliverability Status Obtained	Commercial Operation Date
Initial Synchronization	90 days prior to Expected Commercial Operation Date
Expected Commercial Operation Date	10/1/2028

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

Expected Energy:

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

7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Guaranteed Capacity: 80 MW

Contract Price

Contract Year	Contract Price
1 – 20	

Product:

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

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security:

Development Security:

Performance Security:

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	21
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	22
2.1 Contract Term.	22
2.2 Conditions Precedent to Delivery Term	22
2.3 Development; Construction; Progress Reports.....	24
2.4 Remedial Action Plan	24
2.5 Seller Obligations Regarding Signage.....	24
2.6 Right of First Offer	25
2.7 CPUC Mid-Term Reliability Requirements	25
ARTICLE 3 PURCHASE AND SALE	26
3.1 Purchase and Sale of Product.....	26
3.2 Sale of Green Attributes.....	26
3.3 Imbalance Energy.	26
3.4 Ownership of Renewable Energy Incentives.....	27
3.5 Future Environmental Attributes.	27
3.6 Pre-ECOD Product.....	27
3.7 Capacity Attributes.	28
3.8 Resource Adequacy Failure	28
3.9 CEC Certification and Verification.	29
3.10 California Renewables Portfolio Standard.....	29
3.11 Change in Law.	30
3.12 Tax Law Change.....	31
ARTICLE 4 OBLIGATIONS AND DELIVERIES	33
4.1 Delivery.....	33
4.2 Title and Risk of Loss.	33
4.3 Forecasting.....	33
4.4 Dispatch Down/Curtailment.	35
4.5 Reserved.....	36
4.6 Reduction in Delivery Obligation.....	36
4.7 Guaranteed Energy Production.	37
4.8 WREGIS	37
4.9 Station Use	39
4.10 Interconnection Capacity	39
ARTICLE 5 TAXES.....	39
5.1 Allocation of Taxes and Charges.....	39
5.2 Cooperation.....	39
5.3 Ownership.....	40

ARTICLE 6 MAINTENANCE OF THE FACILITY	40
6.1 Maintenance of the Facility.	40
6.2 Maintenance of Health and Safety.....	40
6.3 Shared Facilities.....	40
ARTICLE 7 METERING	40
7.1 Metering.....	40
7.2 Meter Verification.....	41
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	41
8.1 Invoicing.	41
8.2 Payment.....	41
8.3 Books and Records.	42
8.4 Payment Adjustments; Billing Errors.	42
8.5 Billing Disputes.	42
8.6 Netting of Payments.....	43
8.7 Seller’s Development Security.	43
8.8 Seller’s Performance Security.....	43
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral	44
8.10 Seller’s Financial Statements.....	44
8.11 Uniform Commercial Code Waiver.....	44
ARTICLE 9 NOTICES.....	45
9.1 Addresses for the Delivery of Notices	45
9.2 Acceptable Means of Delivering Notice.....	45
ARTICLE 10 FORCE MAJEURE	45
10.1 Definition	45
10.2 No Liability If a Force Majeure Event Occurs	46
10.3 Notice.....	46
10.4 Termination Following Force Majeure Event.....	46
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	47
11.1 Events of Default	47
11.2 Remedies; Declaration of Early Termination Date.....	50
11.3 Termination Payment.....	50
11.4 Notice of Payment of Termination Payment	51
11.5 Disputes with Respect to Termination Payment.....	51
11.6 Rights and Remedies Are Cumulative.....	51
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	51
12.1 No Consequential Damages.....	51
12.2 Waiver and Exclusion of Other Damages.....	52
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	52
13.1 Seller’s Representations and Warranties.	52

13.2	Buyer’s Representations and Warranties	53
13.3	General Covenants	54
13.4	Prevailing Wage; Community Benefit.....	55
13.5	Diversity Reporting.....	55
ARTICLE 14 ASSIGNMENT		55
14.1	General Prohibition on Assignments.	55
14.2	Collateral Assignment.....	56
14.3	Permitted Assignment by Seller.....	58
14.4	Buyer Limited Assignment.	58
ARTICLE 15 DISPUTE RESOLUTION		59
15.1	Governing Law.	59
15.2	Dispute Resolution.....	59
ARTICLE 16 INDEMNIFICATION.....		59
16.1	Indemnification.	59
16.2	Claim Notice.	60
16.3	Defense of Claims.....	60
16.4	Rights and Remedies are Cumulative.....	61
ARTICLE 17 INSURANCE.....		61
17.1	Insurance	61
ARTICLE 18 CONFIDENTIAL INFORMATION		62
18.1	Definition of Confidential Information.....	62
18.2	Duty to Maintain Confidentiality.....	62
18.3	Irreparable Injury; Remedies	63
18.4	Permitted Disclosure.....	63
18.5	Press Releases	63
ARTICLE 19 MISCELLANEOUS		63
19.1	Entire Agreement; Integration; Exhibits.....	63
19.2	Amendments	64
19.3	No Waiver	64
19.4	No Agency, Partnership, Joint Venture or Lease.....	64
19.5	Severability	64
19.6	Mobile-Sierra	64
19.7	Counterparts.....	65
19.8	Electronic Delivery	65
19.9	Binding Effect.....	65
19.10	No Recourse to Members of Buyer or Seller’s Related Persons	65
19.11	Forward Contract	65
19.12	Further Assurances.....	65
19.13	Change in Electric Market Design.....	65

Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F-1	Form of Average Expected Energy Report
Exhibit F-2	Form of Monthly Delivery Forecast
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Community Benefit
Exhibit P	Diversity Reporting
Exhibit Q	Metering
Exhibit R	Limited Assignment Agreement

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase 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, control and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**Availability Assessment Hours**” means the five consecutive hour period pre-defined by CAISO pursuant to Section 40.9.3 of the CAISO Tariff as the Availability Assessment Hours for resources providing system resource adequacy, as may be revised by the CAISO from time to time. As of the Effective Date, CAISO has determined the Availability Assessment Hours for resources providing system resource adequacy are (a) for the months of March through May, hour ending (“HE”) 1800 through HE 2200 (i.e., 5 consecutive hours per day between 5 PM – 10 PM), Monday through Saturday (6 days per week, excluding NERC holidays), and (b) for all other months, HE 1700 through HE 2100 (i.e., 5 consecutive hours per day between 4 PM - 9 PM), Monday through Saturday (6 days per week, excluding NERC holidays).

“**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 “Qualified Operator”, “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 voting equity of such Person, or (b) the right to direct the policies or operations of such Person.

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

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

“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.

“Available Generating Capacity” means the capacity of the 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” or **“Bankruptcy”** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) 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 Assumptions” means the following assumptions of Seller: the Facility will be eligible for investment tax credits at a 50% rate under Section 48 of the Code, and accelerated depreciation under Section 168 of the Code, based on the law in effect as of the date hereof and, for the avoidance of doubt, including credit enhancements under Section 48(a)(9) (*prevailing wage and apprenticeship*), Section 48(a)(12) (*domestic content*) and Section 45(a)(14) (*energy community*) of the Code. The Project will utilize Vestas turbines, which qualify as domestic content. The Project will also utilize U.S. steel and iron. The Project commenced construction in calendar year 2024, and Seller has confirmed that the Project is located in an energy community for purposes of Section 45(a)(14) (*energy community*) of the Code.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California or New York. 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 in accordance with Section 4.3 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 (a) an 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 or (b) a reduction of Facility Energy due to Buyer’s participation in the Ancillary Services market.

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

“Buyer’s Share” means [REDACTED]

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

“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 (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“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 including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility, and shall exclude Energy, Green Attributes and Tax Credits or Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

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

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

“CEQA” means the California Environmental Quality Act.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making, issuance, or withdrawal of, or any change in, any request, guideline, guidance, or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CPUC, or (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC.

“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 or exercise control over, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the voting 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 cash or tax equity provider directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, or any trustee or agent or similar representative acting on their behalf or any assignee or transferee thereof) shall be excluded from the total outstanding equity interests in Seller.

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

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

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

“Contract Quantity” means Buyer’s entitlement to the following quantities of the Product:

- (1) Buyer’s Share of the Facility Energy;
- (2) Buyer’s Share of the Green Attributes, including RECs;
- (3) one hundred percent (100%) of the Capacity Attributes associated with the Facility; and
- (4) one hundred percent (100%) of the Ancillary Services that may be obtained from the Facility.

“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.

“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. If ratings by S&P, Fitch and Moody’s are not equivalent, the lowest 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 ordered by CAISO, Participating Transmission Owner, or, if applicable, distribution operator in accordance with Seller's obligations under its Interconnection Agreement, or due to physical or operational limitations on the transfer of energy after the Delivery Point.

"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 4.10.

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point as Facility Energy, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or if unavailable, to be calculated by an industry-standard methodology reasonably agreed to by Buyer and Seller that used meteorological conditions on the Site as input for the period of time during such Buyer Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

“Deemed Delivered RA” means for each RA Shortfall Month, (a) the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) a Force Majeure Event, (ii) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility, and (iii) a Buyer-directed curtailment, to the extent such curtailment reduced the maximum achievable Net Qualifying Capacity of the Facility, plus (b) any Replacement RA Capacity or RA Substitute Capacity, as applicable, provided at no cost to Buyer.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.8(e).

“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.

“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.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point and within the Facility, including losses associated with delivery of Facility 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 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 Facility Energy during each Contract Year in the quantity specified on the Cover Sheet, which amount will be adjusted proportionately to the reduction in Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the wind energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point; *provided*, that the “Facility” does not include the Shared Facilities or Interconnection Facilities (other than Seller’s Interconnection Facilities).

“Facility Energy” means the Energy generated by the Facility and delivered to the Delivery Point during each Settlement Interval, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“Facility Meter” means the CAISO-approved 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 Facility Energy generated by the Facility and delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1.

“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.

“Forced Labor” has the meaning set forth in Section 13.1(h).

“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 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 Facility Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Facility Energy produced by the Facility, multiplied by (B) the average 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).

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

“Future Environmental Attributes” shall mean any and all Green Attributes that become recognized under applicable Law after the Effective Date. Future Environmental Attributes do not include Tax Credits or Renewable Energy Incentives associated with the construction, ownership 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 local, 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.

“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 and NERC; *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 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) Capacity Attributes, Energy, Tax Credits or Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility, 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, (ii) 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 (iii) 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 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 pursuant to Exhibit B.

"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 an amount equal to the Qualifying Capacity of a generating facility at a similarly situated location as the Facility and of the same technology and with an installed capacity equal to the Guaranteed Capacity. The Qualifying Capacity shall be exclusive of any reductions due to excessive forced outages of the Facility or Seller's failure to perform its obligations under the Agreement.

"Guarantor" means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of [REDACTED] (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a 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 Capacity” means the actual generating capacity of the 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 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.

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

“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 or Section 48E 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.

“**kW**” means kilowatts in alternating current, unless expressly stated in terms of direct current.

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

“**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, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and/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 [REDACTED] 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 materially 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, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer 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 and (b) if Seller 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 to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. 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, in the case of Seller as the Non-Defaulting Party, Renewable Energy Incentives.

“Lost Output” means the amount of Facility Energy that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, and Curtailment Periods or Buyer’s (or Buyers agent’s) failure to perform its obligations as Scheduling Coordinator under in accordance with this Agreement, or Buyer’s other breach of this Agreement.

“Major Subcontractors” means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of [REDACTED] for performance of any part of the work at the Site.

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

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

“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.

“**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 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.

“**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 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.

[REDACTED]

“Pre-ECOD Product” means the Product in the amount of the Contract Quantity, or any portion thereof if agreed by the Parties, 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.

“Pre-ECOD Contract Price” has the meaning set forth in Section 3.6.

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

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

“Production Tax Credits” or **“PTCs”** means the 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 renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

“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 power industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities 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 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.

“Qualified Operator” means a Person that is, or is controlled by or under common control with, a Person that satisfies the following requirements: (a) a tangible net worth [REDACTED]

[REDACTED] (b) at two (2) years of experience in the ownership and operations of wind energy electricity generating facilities similar to the Facility or has retained a third party with such experience to operate the Facility, (c) such Person (together with its Affiliates) owns or operates at least 250 MW of renewable energy generation facilities, and (d) such Person (together with its Affiliates) are not listed on any sanctions list or domiciled in a

country which is at that time subject to sanctions (including Cuba, Iran, Burma, North Korea, Sudan and Syria).

“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 Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Amount” has the meaning set forth in Section 3.8(b).

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

“RA Substitute Capacity” has the meaning set forth in the CAISO Tariff.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity or hourly expected 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 4.8(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.

“Replacement Price” has the meaning set forth in Section 3.8(b).

“Replacement RA” means Resource Adequacy Benefits equivalent to those that would have been provided by the Facility with respect to the applicable RA Shortfall Month, including, if applicable for such month, Flexible Resource Adequacy Benefits associated with the Facility. In addition, if the CPUC requires Replacement RA to be provided by an incremental resource for

purposes of CPUC Decision 21-06-035 and CPUC Decision 23-02-040 in order for Buyer's purchase of the Product to comply with the requirements of CPUC Decision 21-06-035 and CPUC Decision 23-02-040, if Buyer is using the Product contracted for under the Agreement to comply with such requirements, 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 the Agreement.

"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 shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits 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, 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 Interconnection Facilities" means the Interconnector Customer's Interconnection Facilities as set forth in the Interconnection Agreement.

“Seller’s Related Persons” has the meaning set forth in Section 19.10.

“Seller’s Revenue Share” has the meaning set forth in Exhibit C.

“Seller’s Share” means [REDACTED]

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(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.

“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) any and all Energy that is used within the Facility to power electrical loads that are necessary for operation of the Facility, including information technology, telecommunications, lights, motors, and control systems; and

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

“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.

“Tax Law Change” means (a) any change in or amendment to the Internal Revenue Code or another applicable U.S. federal income tax statute, (b) any change in, or issuance of, or promulgation of any temporary or final Treasury regulations promulgated thereunder that results in any change to the interpretation of the Code or existing Treasury regulations, (c) any guidance from the U.S. Internal Revenue Service published in the Internal Revenue Bulletin and/or Cumulative Bulletin that applies, advances or articulates a new or different interpretation or analysis of any provision of the Internal Revenue Code, any other applicable federal tax statute, or any temporary or final Treasury regulations promulgated thereunder, or (d) any change in the interpretation of the Internal Revenue Code or Treasury regulations by any judicial decision by the U.S. Tax Court, a U.S. District Court, the U.S. Court of Federal Claims, a U.S. Court of Appeals or the U.S. Supreme Court, in each case, that applies, advances or articulates a new or different interpretation or analysis of U.S. federal income tax law.

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

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

“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 Brookfield Corporation.

“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 4.8(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 October 2022, 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” or similar words 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;

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

(n) 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 (“**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 shall survive for one (1) year following the termination of this Agreement 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 setting forth the Installed 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 or an Affiliate of 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) Seller has commissioned all equipment in accordance with its respective manufacturer's specifications in all material respects;

(e) The Facility has received authorization to parallel the Facility from the Participating Transmission Owner;

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

(g) All material regulatory authorizations, approvals and permits for the operation of the Facility have been obtained 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;

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

(i) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after commercial operation of the 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 Facility, QRE service agreement applications, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(j) the Facility has achieved Full Capacity Deliverability Status and Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status;

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

(l) Seller has provided Buyer with evidence of required insurance in accordance with Section 17.1(h);

(m) Seller has satisfied its workforce and community benefit requirements set forth in Section 13.4 (to the extent required to be satisfied as of or prior to commencement of the Delivery Term);

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

(o) Seller has paid Buyer all amounts owing under this Agreement, if any, including Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of each calendar month, starting after the first full calendar month after the Effective Date, Seller shall provide to Buyer a Progress Report and participate in regularly scheduled telephonic or video-conferenced 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 reasonably 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 any one (1) Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days 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 and Article 11, so long as Seller complies with its obligations pursuant to 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 **Seller Obligations Regarding 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 should 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 sixty (60) days of the Commercial Operation Date.

2.6 Right of First Offer. If this Agreement is terminated due to a Seller Event of Default, Seller shall not enter into any agreement to sell the Contract Quantity, or any portion thereof, within two (2) years after the effective date of such termination (other than (a) sales of Facility Energy, Capacity Attributes and Ancillary Services to the CAISO markets and (b) sales of Green Attributes with a delivery term not to exceed six (6) consecutive months), 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 ROFO 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, 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. For avoidance of doubt, nothing in Section 2.6 shall restrict or otherwise limit Seller’s right to contract for or sell to third-parties Guaranteed Capacity (or Installed Capacity, if the Commercial Operation Date has occurred) in excess of the Buyer’s Share of Guaranteed Capacity, so long as such transaction would not prevent Seller from fulfilling its obligations to offer and deliver Buyer’s Share of Guaranteed Capacity to Buyer in accordance with this Section 2.6.

2.7 CPUC Mid-Term Reliability Requirements. Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC Decision 21-06-035, Decision 23-02-040, other potential future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable. In furtherance of such compliance obligations, Seller represents and warrant to Buyer that:

(a) The Facility shall be incremental to the CPUC’s baseline generator list identified in CPUC Decision 21-06-035 as of the Effective Date;

(b) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035, Decision 23-02-40, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable; and

(c) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035, Decision 23-02-040, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable during the Delivery Term to any other person or entity.

(d) Seller shall, upon reasonable request of Buyer, provide additional information and documentation reasonably available to Seller to Buyer to assist Buyer to meet compliance with regulatory agency requests and requirements that the Facility meets the procurement mandates set forth in CPUC Decision 21-06-035, Decision 23-02-040, other future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable. Such documentation includes, but is not limited to, unredacted 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. Seller hereby authorizes Buyer to submit this and similar documentation to any requesting regulatory agency as may be required in connection with satisfying Buyer's compliance obligations for the Facility under the Agreement, provided that Buyer shall use reasonable efforts to obtain confidential treatment by the requesting regulatory agency for all information that qualifies as Confidential Information under the Agreement, or which is subject to Seller's reasonable confidentiality obligations to third parties, and is eligible for confidential or protective treatment under the requesting regulatory agency's rules, orders, decisions on confidential or protected information; including pricing and other information that is commercially sensitive, confidential or proprietary.

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 the Contract Quantity of Product produced by or associated with the Facility, and Buyer will purchase the Contract Quantity of Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C. At its sole discretion but subject to Section 5.2, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Contract Quantity of 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 Contract Quantity of 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 that 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, the Contract Quantity of Green Attributes attributable to the Facility Energy generated and/or delivered by the 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, except as provided in Exhibit C and Exhibit D.

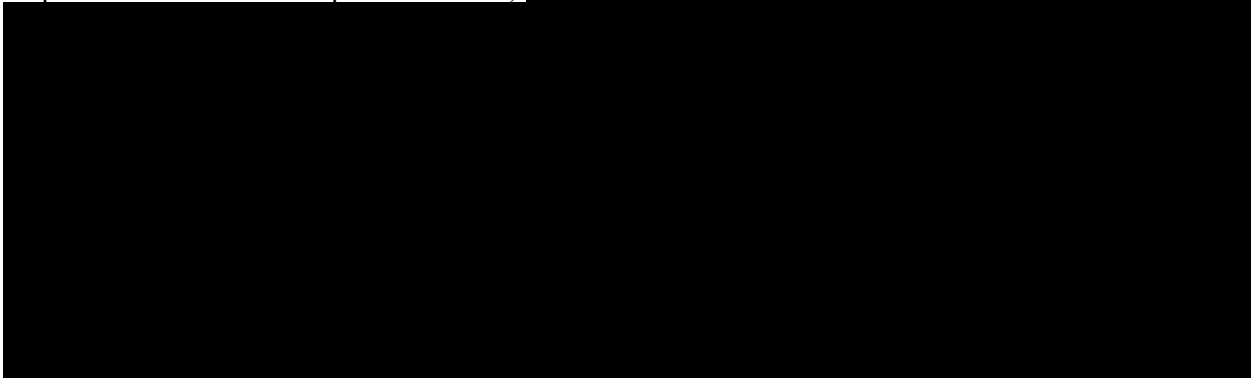
3.4 **Ownership of Renewable Energy Incentives.** Subject to Section 3.12(d), Seller shall have all right, title and interest in and to all Renewable Energy Incentives and Buyer acknowledges that any such Renewable Energy Incentives belong to Seller. If any such Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the exclusive right to claim Buyer's Share of such Future Environmental Attributes subject to the final sentence of this Section 3.5(a) and Sections 3.5(b) and 3.11, and if Buyer claims such Future Environmental Attributes, 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 or the operation of the Facility to reduce Facility Energy unless the Parties have agreed on all necessary terms and conditions relating to such alteration or changes in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or changes in operation.

(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 **Pre-ECOD Product.** If completion of the Facility is expected to occur prior to the Expected Commercial Operation Date, 



[REDACTED]

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 have obtained Full Capacity Deliverability Status in the CAISO generator interconnection process. 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, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity 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, and subject to Section 3.11, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer from the 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.** For each RA Shortfall Month after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to

[REDACTED]

Seller may provide Replacement RA in amounts up to the RA Shortfall Amount, 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 to be set out in Exhibit M at least [REDACTED] before the applicable CPUC Showing Month for the purpose of monthly RA reporting and any Replacement RA delivered to Buyer pursuant to the terms of this Section 3.8(b) will reduce the RA Shortfall Amount used in calculating the RA Deficiency Amount. “**Replacement Price**” means (x) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for the Resource Adequacy Benefits not delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such replacement Resource Adequacy Benefits, or at Buyer’s option, (y) the market price for such replacement Resource Adequacy Benefits 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. Upon request from Seller, Buyer shall provide reasonable documentation demonstrating the Replacement Price amounts sought by Buyer from Seller were incurred or determined, as applicable, by Buyer in a commercially reasonable manner consistent with the components set forth in the immediately preceding sentence [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 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 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].

(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].

(d) With respect to the immediately preceding paragraphs, (i) the references in Section 3.10(a) to “Project” have the same meaning as “Facility”, (ii) the reference in Section 3.10(a) to “certified by the CEC” means the Facility has received CEC Certification and Verification, (iii) the reference in Section 3.10(a)(ii) to “the Project’s output” has the same meaning as “Facility Energy”, (iv) the reference in Section 3.10(a) to “commercially reasonable efforts” means efforts consistent with and subject to Section 3.11 below, and (v) the reference in Section 3.10(c) to “first delivery under the contract” has the same meaning as “first delivery of Facility Energy under this Agreement”.

3.11 Change in Law.

(a) The Parties acknowledge that Buyer is using this Agreement to comply with multiple current and future regulatory compliance obligations, including the California Renewables Portfolio Standard, the Resource Adequacy Rulings, CPUC Decisions 21-06-035 and Decision 23-02-040 and other potential future CPUC decisions mandating procurement, and/or another existing or future compliance program administered by any regulatory agency to which Buyer is accountable, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions from time to time to implement a Change in Law. Subject to this Section 3.11, 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 a Change 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 the Resource Adequacy Rulings or CPUC Decisions 21-06-035 and 23-02-040; (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 Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard (any action required to be taken by Seller to comply with such Change in Law, a “Compliance Action”); provided that 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”).

(b) 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.

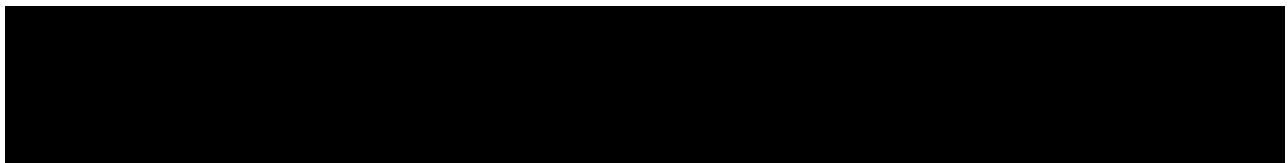
(c) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller shall not be obligated to take any Compliance Actions described in such Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs and expenses that exceed the Compliance Expenditure 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. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Contract Term.

(d) 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.

(e) In the event that performance of any material provision of this Agreement becomes illegal due to a Change in Law, either Party may deliver Notice to the other Party and the Parties will meet for the purpose of negotiating any amendments to this Agreement necessary to fulfill the purposes of this Agreement and to give effect to the original intentions of the Parties regarding the appropriate allocation of benefits, burdens, and responsibilities of the Parties under this Agreement. Neither Party is obligated to agree to a change in price or material modification or amendment to this Agreement due to a Change in Law. If the Parties are unable to agree upon amendments to the Agreement to conform to such new legal requirements during the sixty (60) day period following delivery of Notice by of such Change in Law, either Party may terminate this Agreement by Notice to the other Party during the subsequent thirty (30) day period. Following such termination, and subject to payment of any amounts due prior to such termination, neither Party shall have any liability to the other Party, and Buyer shall promptly return to Seller any Development Security or Performance Security, as applicable, then held by Buyer, less any amounts drawn in accordance with this Agreement.

(f) No Party shall be in breach of this Agreement to the extent a Change in Law renders such Party’s performance of this Agreement (in whole or in part) illegal, unenforceable, or otherwise impossible.

3.12 **Tax Law Change.**



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 Contract Quantity of Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Contract Quantity of 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, 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 Contract Quantity of Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all such Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

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

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

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 Facility 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

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 Facility 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 Facility Energy and Available Generating Capacity 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 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 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) hourly expected 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 or hourly expected 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 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 or hourly expected 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 a written directive or order from CAISO or the PTO.

(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 Buyer's Share of all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Contract Price, 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 Curtailment Periods, 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. In addition, if Seller fails to comply with a Curtailment Order, Seller shall pay Buyer for any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with such CAISO directive.

(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 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 Reserved.

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. Seller shall be entitled to maintain, repair, replace, and modify the Facility in accordance with Prudent Operating Practices. Seller shall consult with Buyer at least ninety (90) days in advance of scheduling any Planned Outages and use commercially reasonable efforts to accommodate Buyer's reasonable requests. Unless otherwise agreed in writing, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th or the Availability Assessment Hours except as set forth below, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (any of the scheduled maintenance permitted by subsections (i-iv) of 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.

If, as a result of a Planned Outage or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling a Planned Outage or other outage of the Facility. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for the cost Buyer incurs to procure such RA Substitute Capacity. If Seller declines to provide RA Substitute Capacity, and notifies Buyer to that effect no less than forty-five (45) days before the applicable CPUC Showing Month for the purpose of monthly RA reporting, then Buyer will not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan for such CPUC Showing Month and, to the extent not included within Deemed Delivered RA, then Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.8.

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) Lost Output during the Performance Measurement Period. 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 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy 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 4.8(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 4.8. 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 delivered to the Delivery Point that qualifies for, or would have qualified for but for Seller’s error or omission inconsistent with its requirements hereunder, a WREGIS Certificate, for the same calendar month (“**Deficient Month**”). 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 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 Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 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.

4.9 **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. Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility.

4.10 **Interconnection Capacity.** Seller shall ensure 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**"). During the Delivery Term, 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. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under this Agreement resulting from Seller's inability to provide, or any third-party use of, the Dedicated Interconnection Capacity. To the extent that transmission service is required to deliver the Product to the Delivery Point, Seller shall maintain firm transmission equal to the Guaranteed Capacity during the Delivery Term at Seller's expense.

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 the Contract Quantity 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, subject to Section 3.12(d). 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 Facility 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 the 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

Meter, 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 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 Q. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated, and, and subject to written notice to Buyer, to replace the meter backup battery. 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 Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility. 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.

7.2 **Meter Verification**. Annually, or 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**. Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than ten (10) 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 Facility Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the calculation of Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product and the Seller's Revenue Share calculated 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 and any other amounts due hereunder by wire transfer or ACH payment to the bank account provided on each monthly

invoice. Buyer shall pay undisputed invoice amounts within thirty (30) 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 three (3) years from the termination of this Agreement and payment of all invoices, or such longer period if otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, but no more often than three (3) times per Contract Year without a reasonable basis for such request 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).

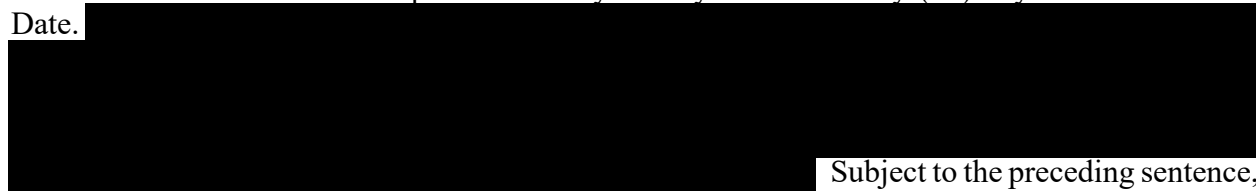
8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO or meter inaccuracies; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. 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. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice 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 shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date.



Subject to the preceding sentence, Seller shall maintain the Development Security in full force and effect at all times. 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 have the right to direct Buyer to apply all or a portion of the Development Security towards the Performance Security obligation. 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 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’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.

8.11 **Uniform Commercial Code Waiver.** This Agreement sets forth the entirety of the Parties’ respective obligations regarding credit, collateral and adequate assurances. Except as expressly set forth in this Agreement, neither Party shall have any obligation to post security, pay deposits, make any other prepayments or provide any other financial assurances in any form whatsoever. Each Party hereby waives all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines.

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; a state of emergency declared by a relevant Governmental Authority; volcanic eruption; flood; pandemic or epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; insurrection; rebellion; violent demonstrations; or strikes, lock-outs, work stoppages 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 the PPA 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 Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction of the Facility; (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 Period, except to the extent such 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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; *provided, however*, that the failure of the main power transformer for the Facility substation will constitute a Force Majeure Event, unless such failure is due to Seller's negligence or failure to exercise reasonable efforts to avoid failure of such main transformer; *provided, further*, that relief under the Agreement for the failure of the main power transformer for the Facility substation (unless caused by an independent Force Majeure Event) shall be limited to no more than one event during the Contract Term and for no longer than three hundred sixty (360) days in total.

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 any provision to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (b) 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 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 provide the other Party with oral notice promptly following the commencement of the Force Majeure Event and, within two (2) weeks of the commencement of the Force Majeure Event, the non-performing Party shall provide the other Party with written notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the claim of Force Majeure Event and Seller's plan to overcome such Force Majeure Event. Failure to provide timely written notice as described in the preceding sentence constitutes a waiver of the Force Majeure claim for all periods prior to Buyer's receipt of such written notice. The suspension of performance due to a claim of Force Majeure 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 during the period in which the Force Majeure Event is continuing. 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 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 willfully and intentionally 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 within [REDACTED]

(iii) 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;

(iv) 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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;

(v) 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;

(vi) if, beginning in the second Contract Year, 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;

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

(viii) 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

(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 (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 [REDACTED]

(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 (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.

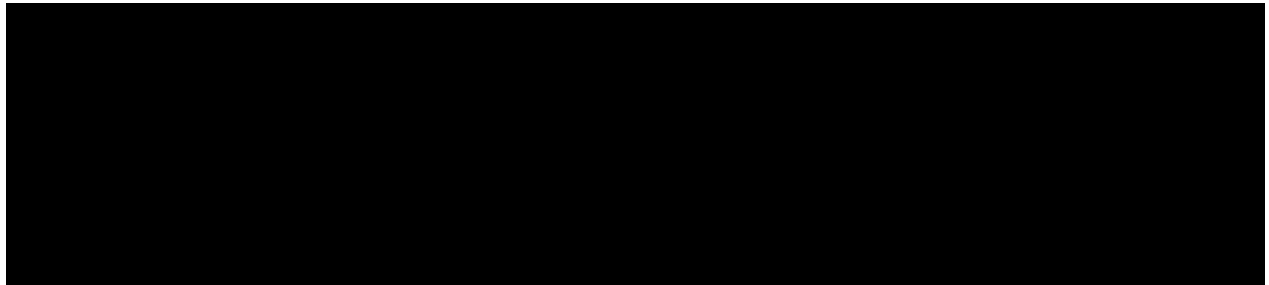
11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party (as of the Early Termination Date) minus any and all other amounts due from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount, *provided*, that if the amounts due from the Non-Defaulting Party exceed the amounts due to the Non-Defaulting Party, then such netted amount shall be Zero Dollars (\$0). 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. 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 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 fifteen (15) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

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



ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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.

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 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 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.

(g) 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.

(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, 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 throughout the Term 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 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; Community Benefit.

(a) 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 agrees to have its primary EPC contractor enter into one or more project labor agreements or utilize one or more existing national labor agreements with participating unions for construction of the Facility, which shall include applicable apprenticeship requirements. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements. Seller shall provide a Seller's officer's certificate in a form reasonably acceptable to Buyer certifying Seller's compliance with the requirements of the foregoing prevailing wage and project labor agreement requirements and such certificate shall be deemed documentation reasonably satisfactory to Buyer for purposes of the foregoing sentence. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor.

(b) Seller shall undertake the community benefit activities set forth in Exhibit O.

13.5 Diversity Reporting. Seller agrees to use commercially reasonable efforts to require its Major Subcontractors complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit P, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar reasonable 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, conditioned or delayed. 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, conditioned or delayed. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall pay Buyer's reasonable, documented out-of-pocket expenses, including reasonable attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing, refinancing, tax equity investment or tax credit transfer in connection with the Facility. Buyer will 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.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement, without the consent of Buyer, 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, conditioned or delayed. 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 or its designee 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 (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) 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 sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer 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 Qualified Operator unless Buyer consents to such sale or transfer;

(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 Qualified Operator then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld, conditioned or delayed;

(i) If requested by Lender, Buyer will make all payments due to Seller under this Agreement to an account designated by Lender in writing;

(j) Lender shall not have any liability or obligation under this Agreement as a result of exercising its rights under the Collateral Assignment Agreement, and Lender shall not be obligated or required to perform any of Seller's obligations under this Agreement, except if this Agreement is transferred to Lender pursuant to subsection (b) above or Lender is a counterparty to a replacement agreement entered into pursuant to subsection (h) above; and

(k) 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.** Subject to the provisions of this Section 14.3, Buyer's consent will not be required for an assignment of this Agreement or a Change of Control of Seller if the assignee or acquiror is an Affiliate of Seller [REDACTED]

[REDACTED]

14.4 **Buyer Limited Assignment.** Buyer shall have the right to make a limited assignment in connection with a municipal prepayment transaction to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an investment grade credit rating, of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts as due hereunder. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under the Agreement notwithstanding the limited assignment. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein.

Subject to the foregoing, Buyer may make such assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit V, or as otherwise reasonably acceptable to Seller. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to 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 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.

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 sitting in San Francisco County, California or if such court does not have jurisdiction, any California state court located 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, then either Party may seek any and all remedies available to it at law or in equity.

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, 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 gross negligence or willful misconduct 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). Such insurance shall contain standard cross-liability and severability of interest provisions. Limits may be satisfied through a combination of primary and excess policies.

(b) **Employer's Liability Insurance.** If Seller has employees, 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 Dollars (\$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 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 as its interest may appear.

(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, sudden and accidental 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 insured. Pollution liability can be maintained as part of commercial general liability policy.

(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. With the exception of Workers' Compensation/Employers' Liability, 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 prior to Buyer making this Agreement publicly available, 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 7920 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 **Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, each Party may disclose Confidential Information to such Party's Affiliates and its and its Affiliates', actual or potential Lenders or investors, actual or potential agents, consultants, contractors, trustees, members, employees or officers, and in the case of Buyer, to actual or potential Limited Assignees, so long as the Person (other than a Person that has an ethical duty of confidentiality to Buyer or Seller, as applicable) 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. In addition, Buyer may disclose this Agreement, or any portion thereof, and any information, data, analyses, documents, and materials furnished or made available to Buyer in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the CEC, the CARB, and any other Government Authority having jurisdiction over Buyer or this Agreement; provided that Buyer shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Government Authority to further disclose such information that qualifies as Confidential Information and is eligible for confidential or protective treatment under the respective regulatory agency's rules, orders, or decisions on confidential or protected information.

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

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that the other Party enter into negotiations to make the minimum changes to this

Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith, provided, however that Seller shall have no obligation to agree to any amendment that results in an unreimbursed reduction of forecast revenue Seller expects to generate under this Agreement. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then the Parties shall promptly submit any unresolved issues to a mutually agreed, independent mediator having experience with the CAISO Tariff and offtake contracts similar to this Agreement. The costs of such mediator shall be borne equally between Buyer and Seller, and each of Buyer and Seller shall cooperate in good faith with any requests made by such mediator and participate in good faith in the mediation process. If Buyer and Seller are unable, within sixty (60) days after such mediator is engaged, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit such issues to the dispute resolution process set forth in Section 15.2. Notwithstanding the foregoing, (a) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (b) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

**Mulqueeney Wind Energy LLC,
a Delaware limited liability company**

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

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

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Mulqueeney Wind 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, not to be unreasonably withheld, conditioned or delayed.

County: Alameda County, California

CEQA Lead Agency: Alameda County

Type of Facility: Wind energy

Guaranteed Capacity: See definition in Section 1.1.

Interconnection Point: Tesla TS 230 kV bus

Delivery Point: Facility Pnode on the CAISO Grid

PNode: Seller will promptly notify Buyer upon Seller's receipt of the PNode designation from CAISO

Participating Transmission Owner: Pacific Gas and Electric Company

US-made equipment and components: The Project will utilize Vestas turbines, which qualify as domestic content. The Project will also utilize U.S. steel and iron.

Schedule 1

List of APNs

[illegible]

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.** “**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**.” Seller shall provide such certificate within thirty (30) days of the Effective Date.
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**”), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved; provided that Buyer will provide a response to Seller’s notice of Commercial Operation within five (5) Business Days of receipt thereof or will be deemed to have agreed that Commercial Operation has been achieved. Seller shall provide Notice to Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Date or (y) the date on which Commercial Operation is achieved. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date.
3. **Commercial Operation Delay Damages; Termination for Failure to Achieve Commercial Operation.** If the Commercial Operation Date has not occurred on or before the Guaranteed Commercial Operation Date, after giving effect to extensions under this Exhibit B, [REDACTED]
[REDACTED] Commercial Operation Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. If Seller fails to pay the Commercial Operation Delay Damages within ten (10) Business Days of receipt of Buyer’s invoice, Buyer shall be entitled to deduct such Commercial Operation Delay Damages from the Development Security. A prorated amount will be returned to Seller if COD is achieved during the month for which Commercial Operation Delay Damages were paid in advance. 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. If

Seller achieves Commercial Operation prior to the Early Termination Date specified by Buyer, Buyer's termination shall be deemed rescinded.

4. **Extension of the Guaranteed Dates.** 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;

[REDACTED]

[REDACTED]

d. delays caused by Buyer.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Sections 4(a), 4(b) and 4(c) 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 the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines. If Seller fails to provide timely notice as required by the next sentence, Seller will not be entitled to any extension under the Development Cure Period for the period between the deadline for such notice and when such notice is actually delivered. 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 reasonably demonstrating that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to the

Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Facility Energy Deliveries Up To [REDACTED]

(b) Excess Contract Year Deliveries Over [REDACTED]

(c) Excess Contract Year Deliveries Over [REDACTED]

(d) [REDACTED]

(e) 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 megawatt 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.

(f) Curtailement Payments.

A large rectangular area of the document is completely redacted with a solid black fill, obscuring several lines of text.

(g) Pre-ECOD Product. Pre-ECOD Product is compensated in accordance with Section 3.6.

(h) Tax Credits.

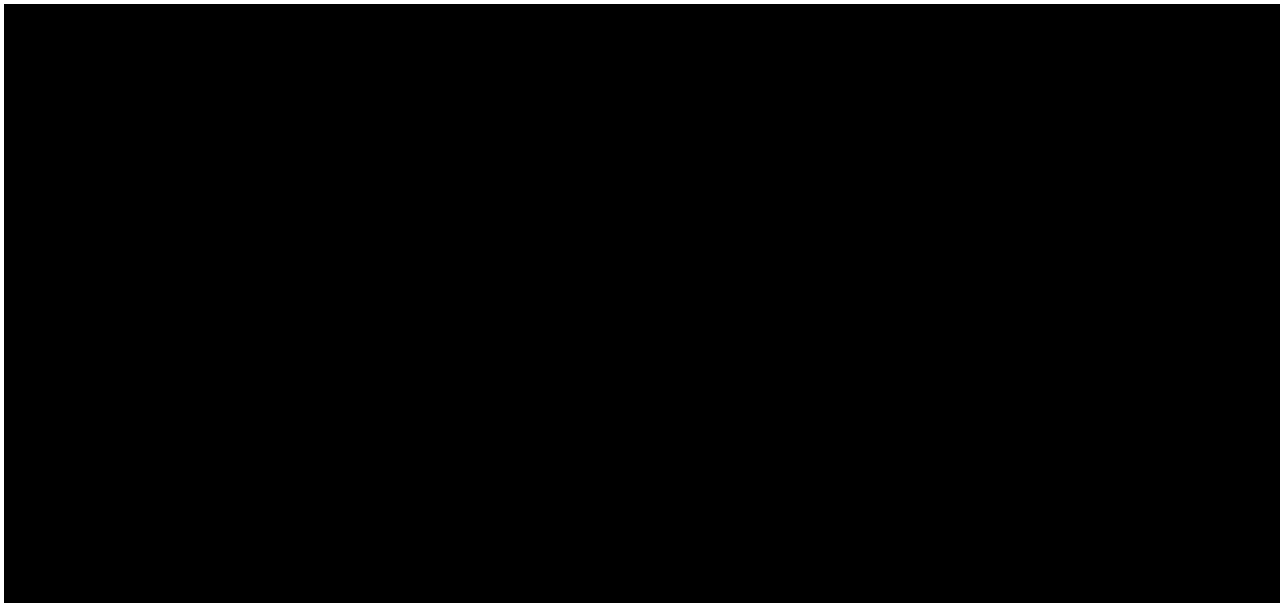
A large rectangular area of the document is completely redacted with a solid black fill, obscuring a significant portion of the lower half of the page.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Beginning on the Commercial Operation Date, 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 Product at the Delivery Point. For avoidance of doubt, Buyer shall act as Scheduling Coordinator for 100% of the Facility Energy. At least sixty (60) days prior to the Commercial Operation Date, (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 Commercial Operation Date, 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 Commercial Operation Date. On and after the Commercial Operation Date, 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. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility. Seller, as owner of the Facility, shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Seller as owner of the Facility. Seller shall ensure that Buyer (as SC) has all necessary data access or reporting, as applicable, to the extent necessary to satisfy any applicable CAISO requirements.

(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 Buyer (as the Facility's SC) and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility, subject to Buyer's obligation to pay Seller the Seller's Revenue Share. Seller shall be responsible for all CAISO costs, charges, and penalties imposed on Buyer resulting from (i) Seller's failure to perform its obligations under this

Agreement, (ii) outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity from the Facility (including RAIMM (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order or Buyer Curtailment Order if such failure results in incremental costs to Buyer. The Parties agree that any RAIMM and other Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any RAIMM and other Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling 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, including upon request of Seller, 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 that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CAISO's Master Resource Database and Master File. Seller shall provide

the data 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 at least ten (10) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least ten (10) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC 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) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(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

Hourly Expected Energy

HE	Day																													
	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																														

Available Generating 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

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 = Buyer's Share of the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = Buyer's Share of the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh,

[REDACTED]

D = the Contract Price

“Adjusted Energy Production” shall mean the sum of the following: [REDACTED]

“**Replacement Product**” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer by Seller in accordance with Section 4.7, qualifies under Public Utilities Code Section 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is 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 Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Mulqueeney Wind Energy LLC, a Delaware limited liability company ("**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.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. Seller has installed equipment for the Facility with a nameplate capacity of no less than [REDACTED] of the Guaranteed Capacity.
2. The Facility's testing included a performance test demonstrating peak electrical output of no less than [REDACTED] of the Guaranteed Capacity for the 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].
3. All other systems of the Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
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 this Agreement and/or the CAISO.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this [REDACTED] day of [REDACTED], 20 [REDACTED].

[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 Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between Mulqueeney Wind Energy LLC, a Delaware limited liability company ("**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.

I hereby certify the performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by Mulqueeney Wind Energy 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 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____.

MULQUEENEY WIND ENERGY LLC,
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

TRACKING NO: [____]
VERSION 1 DATED [____]

Irrevocable
Standby Letter of Credit No.:

Beneficiary:

[insert single entity's full name and address]

Applicant:

Brookfield [insert single entity's full name and address]

Date of Issuance:

Mon DD, YYYY

Date and Place of Expiry

Month DD, YYYY New York Branch

[one year from issuance]

Amount:

USD [____][____] United States Dollars

We, [-]. (the "Issuing Bank"), hereby establish this Irrevocable Standby Letter of Credit in favor of Marin Clean Energy, a California joint powers authority ("Beneficiary") advised through [] (the "Advising Bank") and for the account of __ single entity's full name ____ (the "Account Party"), for drawings in the aggregate pursuant to that certain Renewable Power Purchase Agreement dated as of [date] and as amended between Applicant and Beneficiary (the "Agreement"). This Letter of Credit shall become effective immediately and shall expire on [date] which is [time period] after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds thirty30days under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's duly authorized representative, in the form attached hereto as Exhibit A, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate"). The Drawing Certificate may be delivered in person, or by courier, certified mail, registered mail, or by facsimile transmission to facsimile number 1-905-

948-1934 (if presented by fax it must be followed up by a phone call at 1-416-542-4344 or 1-416-542-4899 to confirm receipt).

This Letter of Credit will be deemed automatically extended for successive periods of one year each from the present or any future Expiration Date (but in no event later than [insert date that is [X] years after date of issuance to ensure coverage during full PPA Term]), unless the Issuing Bank notifies the Beneficiary, advised through the Advising Bank, not less than ninety (90) days prior to any such date, that the Issuing Bank have elected not to extend such expiration date for such additional period. Any notice of the Issuing Bank's election not to extend the expiration date of this Letter of Credit will be effective only upon actual delivery to the Beneficiary and no such notice will have any effect absent such actual delivery.

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.

The Issuing Bank hereby agrees with the Beneficiary that documents drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation as specified. In addition, the Issuing Bank's undertaking under this Letter of Credit is in no way contingent upon reimbursement with respect to any drawing hereunder or upon the Issuing Bank's ability to perfect any security interest or other lien.

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.

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.

With respect to the Rules 2.01 and/or 5.01 of ISP98, if a drawing is made by Beneficiary hereunder on a Banking Day (as defined in ISP98) before 12:00 P.M. (New York City time) payment will be made of the amount specified in immediately available funds by the close of business (New York City time) on the second following Banking Day; if a drawing is made by Beneficiary hereunder on a Banking Day after 12:00 P.M. (New York City time) payment will be made of the amount specified in immediately available funds by the close of business (New York City time) on the third following Banking Day.

This Letter of Credit may not be amended, changed or modified, or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to, or to which this Letter of Credit relates, and any such reference will not be deemed to incorporate herein by reference any document, instrument or agreement, without the express

written consent of the Beneficiary and the Issuing Bank.

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: Marin Clean Energy, Attn: Vice President of Finance, 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]

Authorized Signature(s)

[officer name]
[officer title]

Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[*Bank Name and Address*]

To Whom It May Concern:

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 [*bank name*] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of [*date*] (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 [_____] a [_____] (“**Guarantor**”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and Mulqueeney Wind Energy LLC, a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, 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, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to 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 Mulqueeney Wind Energy 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 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 Information¹

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.

MULQUEENEY WIND ENERGY LLC
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

Mulqueeney Wind Energy LLC	Marin Clean Energy
All Notices: 200 Liberty Street, 14th Floor New York, NY 10281 Telephone: (646) 992-2367 Attention: General Counsel Email: legal.department.na@brookfieldrenewable.com	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: contractadmin@mcecleanenergy.org
Reference Numbers: Duns: Pending Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Settlements Department Phone: (819) 561-2722 Email: settlementwc@brookfieldrenewable.com	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6684 Email: settlements@mcecleanenergy.org
Scheduling: Attn: Asset Management Phone: (646) 992-9330 Email: Nelson.JIA@brookfieldrenewable.com	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Phone: Email:	Confirmations: Attn: Power Resources Phone: (415) 464-6010 Email: procurement@mcecleanenergy.org
Payments: Attn: Accounts Payable Phone: Email: AP@brookfieldrenewable.com	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6010 Email: settlements@mcecleanenergy.org
Wire Transfer: [REDACTED]	Wire Transfer: [REDACTED]
Credit and Collections: Attn: Credit Department Phone: (819) 561-2722 x 8403 Email: riskmanagement@brookfieldrenewable.com	Credit and Collections: Attn: Finance Phone: (415) 464-6667 Email: finance@mcecleanenergy.org

Mulqueeney Wind Energy LLC	Marin Clean Energy
With additional Notices of an Event of Default to: 200 Liberty Street, 14th Floor New York, NY 10281 Telephone: 1 646.992.2367 Attention: William Fyfe, General Counsel Email: william.fyfe@brookfieldrenewable.com	With additional Notices of an Event of Default to: Attn: Legal Phone: (415) 464-6010 Email: contracts@mcecleanenergy.org With a copy to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: Asset Management Phone: (646) 992-9330 Email: Nelson.JIA@brookfieldrenewable.com	Emergency Contact: Attn: Vidhi Chawla, VP of Power Resources Phone: (925) 378-6731 Email: vchawla@mcecleanenergy.org

EXHIBIT O
COMMUNITY BENEFIT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT P

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.



EXHIBIT Q
METERING

EXHIBIT R

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among Mulqueeney Wind Energy 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 Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms but not define in this Agreement have the meaning set forth in the PPA.

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 of PPA Seller 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. Such assignment, transfer and conveyance does not relieve PPA Buyer of its obligations under the PPA.
- (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 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) On or before the commencement of the Assignment Period, [_____] ("**Guarantor**"), Inc. will issue, in favor of PPA Seller, a guaranty of Limited Assignee's payment obligations under this Assignment Agreement substantially in a form mutually agreed by

PPA Seller and the Limited Assignee (“**Guaranty**”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.

- (g) 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.

- (h) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Limited Assignee and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.
- (i) Limited Assignee may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of PPA Seller; provided that, notwithstanding the foregoing, Limited Assignee may, without the consent of PPA Seller or PPA Buyer, assign this Agreement if either (i) the Guaranty continues to apply to the obligations of the assignee hereunder or (ii) the assignee (a) is an entity with a Credit Rating equal to or better than Limited Assignee’s Credit Rating at the time of the Effective Date, and (b) such assignee provides to PPA Seller a replacement guaranty, on terms that are acceptable to PPA Seller acting commercially reasonably, of its obligations issued by the Guarantor (“**Replacement Guaranty**”); provided further that Limited Assignee shall (1) no fewer than fifteen (15) Business Days before any such assignment, give Notice to PPA Seller and PPA Buyer of the particulars of such assignment and the proposed assignment agreement, and, if clause (ii) above in this paragraph applies, supporting documentation as to the assignee’s Credit Rating together with the proposed Replacement Guaranty, and (2) upon such assignment provide Notice to PPA Seller and PPA Buyer with a copy of the fully executed assignment agreement and, if applicable, such Replacement Guaranty executed and issued by Guarantor.

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 clause (a)(1) above.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA.
- (d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty, unless a Replacement Guaranty will take effect no later than the termination date of the Guaranty.
- (e) 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. Except as otherwise disclosed to the Limited Assignee, 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 Buyers agree to notify Limited Assignee of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. 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 15 (Dispute Resolution), 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.

MULQUEENEY WIND ENERGY LLC

MARIN CLEAN ENERGY

By:
Name:
Title:

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: Renewable Power Purchase Agreement, dated [____], by and between Marin Clean Energy, a California joint powers authority and Mulqueeney Wind Energy 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 2 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.*]



September 5, 2025

TO: MCE Technical Committee

FROM: Alexandra McGee, Vice President of Strategic Initiatives

RE: Amended Virtual Power Plant Tariff (Agenda Item #07)

ATTACHMENTS: A. Electric Schedule for Pilot Virtual Power Plant Tariff (VPPT) redlined
B. Electric Schedule for Pilot Virtual Power Plant Tariff (VPPT) clean

Dear Technical Committee Members:

Summary:

In February 2025, your Board approved MCE entering into a contract with the California Energy Commission to receive \$5,000,000 in funding to expand MCE's Virtual Power Plant (VPP). To allow for the expansion of this VPP beyond the pilot City of Richmond, this tariff must be amended to allow all MCE member communities to be eligible to participate. To fulfill this obligation and facilitate the VPP expansion, staff request that the Technical Committee approve this updated VPP Tariff.

Background:

In 2022, MCE joined the implementation of an Electric Program Investment Charge (EPIC) grant from the California Energy Commission (CEC). With MCE's participation, the team began developing a Virtual Power Plant (VPP) pilot within the City of Richmond. Together, the partners installed privately-owned distributed energy resources (DERs) – such as rooftop solar, heat pump water heaters, smart thermostats, smart plugs, electric vehicles, and energy storage – to communicate with the VPP's Distributed Energy Resource Management System (DERMS). These DERs can now send data directly to the DERMS and be remotely controlled and operated to pull power to and from the grid at strategic times, creating pockets of power to support and decarbonize the grid.

To facilitate the dispatch of these devices, a new tariff needed to be developed. To produce the pilot tariff, MCE staff built upon the Pilot Battery Storage Tariff (PBST) which was approved by Technical Committee in late 2016 and then updated in late 2020. The Electric Schedule VPPT - Virtual Power Plant Tariff was then approved by the Technical Committee in September 2020. This tariff allows MCE to aggregate and dispatch DERs to manage critical peak loads, minimize procurement costs, and, as market opportunities evolve, generate value in wholesale markets.

The project team is now completing the pilot phase of this project. In February 2025, the MCE Board voted to accept an additional \$5,000,000 in grant funds from the CEC to expand the VPP offering from the City of Richmond to all MCE member communities, which includes roughly 85,000 solar systems and almost 20,000 battery storage systems that could possibly participate.

Participating customers would be billed in accordance with their otherwise applicable MCE rate schedule. DER equipment would be required to maintain a connection to the VPP so that MCE can remotely monitor, manage, and dispatch the technologies according to the Tariff. Participants may not be enrolled in other DER aggregation or demand response programs. In exchange, participants served under this Tariff would receive monthly credits on their bill. This monthly credit is capped at \$40 per month for residential accounts; \$50 per month for low-income residential accounts; \$300 per month for commercial accounts; and \$750 per month for industrial accounts. As outlined in the tariff, commercial and industrial (C&I) accounts are eligible for an additional annual true-up process to address any additional payment.

This monthly credit structure was developed to protect against overpayment until actual data is received and reconciled, providing more certainty in the reliability of DER dispatchability. If participating C&I customers generate more credit than has been paid through the Commercial Monthly Advanced Payment (CMAP), they can receive an annual true-up bill credit of the balance owed, measured by the total kWh of flexible load delivered over the course of the previous year. There is no penalty if participants generate less credit than has been paid in the CMAP.

The \$5,000,000 VPP FLEX grant from the CEC includes \$765,000 for new bill credits:

- \$315,000 for up to 35 commercial customers
- \$270,000 for up to 150 low-income residential customers
- \$144,000 for up to 100 participating residential customers
- \$36,000 for up to 2 participating industrial customers

To expand the eligibility of participating customers, staff is recommending the Technical Committee adopt the proposed edits to the VPP Tariff (Attachments A and B.)

The grant is expected to be completed in 2029. During this timeline, staff will develop a value-sharing methodology to more accurately assess the value generated by the DER dispatchability. Staff will then return to this Committee with this assessment to inform the next iteration of the VPP Tariff. This future change would ensure that the value generated by the DER dispatchability more directly informs the bill credits, thereby creating its own revenue source moving forward.

Fiscal Impacts:

The amended tariff would use \$765,000 of the Board-approved VPP FLEX funds to fund VPP bill credits during the grant term, currently approved to run from Fiscal Year 2025-2029.

To cover the cost of longer-term bill credits, staff will return to this Committee before 2029 to adapt this Tariff based on the results of the value-sharing methodology to ensure the VPP bill credits are self-generating.

Recommendation:

Approve the amended VPP Tariff.



~~Initial~~ Electric Schedule for ~~Pilot~~ Virtual Power Plant Tariff (VPPT)

APPLICABILITY: The Virtual Power Plant Tariff (VPPT) is available ~~only to City of Richmond~~ MCE customers that have executed the MCE Virtual Power Plant Agreement (VPPA), and that have installed one or more qualified and fully operational distributed energy resources (DER) using an MCE-authorized Designee, with remote monitoring and dispatchable direct load control capabilities, behind the customer's utility electric meter, as verified by MCE. Customers that participate in MCE's Virtual Power Plant (VPP) Pilot can reduce their annual electricity costs, increase their resiliency, contribute to improving the health of their local grid conditions, support the advancement of cutting-edge innovative energy technology, while also earning valuable monthly bill credits for participation through this ~~pilot~~ tariff. _____

SERVICE AREA: This schedule is available to MCE customers ~~in the City of Richmond~~.

SUBSCRIPTION LIMIT: Subscription to this schedule is limited to ~~200~~ 50,000 customers.

ELIGIBILITY: This optional schedule is available to MCE customers that meet the conditions detailed below.

To be eligible for the VPPT, a customer must meet and maintain the following requirements:

1. Customers must have an active MCE residential, commercial, or industrial account with ~~a Richmond~~ service address, that is in good standing.
2. The customer account may not be enrolled in utility or third-party demand response programs or other behind-the-meter DER aggregations, including MCE's programs like Peak FLEXmarket. Accounts that are enrolled in a utility or other third-party demand response program or aggregation must disenroll in the third-party program prior to enrolling in the VPPPilot. Enrollment can be determined using a standard form, the Customer Information Service Request (CISR) form.
3. Customers participating in the VPP Pilot must comply with the terms and conditions described in their governing VPPA, and have installed a qualified and fully operational DER compatible for monitoring and dispatchability by MCE pursuant to this tariff.
4. Customer DER installations must be compliant with the rules, stipulations, and restrictions of all manufacturer warranties and state and local codes and regulations, including applicable interconnection requirements. By enrolling in the VPPPilot, customers warrant that they have all necessary authorizations and authority to enroll, and have provided any necessary notices to property owners, managers, or other stakeholders.
5. Customers must be enrolled in one of the following rate schedules:
 - a. Residential: E-TOU-A, E-TOU-B, E-TOU-C, E-TOU-D, EV2, E-6 and EM-TOU.
 - b. Commercial: B-1, B1-ST, B-6, B-10, B-19, B-20, BEV and SB.

Other rate schedules as determined by MCE will be noted at www.mceccecleanenergy.org/rates

6. Customers who change onto an ineligible rate schedule will be removed from the ~~Pilot and~~ VPPT, and monthly bill credits will be discontinued immediately.
7. Customers must have an installed revenue grade meter, such as an AMI Meter (aka- "Smart Meter"), MV-90 Meter, or equivalent load meter capable of providing 15-minute interval data.
8. Customers must provide any information reasonably requested by MCE or its authorized designees that is necessary for MCE to administer this VPPT, such as specifications for pre-existing DER installations.
9. If a participating customer opts-out of MCE service, the customer will be immediately removed from the VPPT on the effective date of the opt_out and will be ineligible for further bill credits, including as well as any applicable Program Year True-Up Payment, as defined below.
10. All customers taking service under the VPPT must have their DER located behind the utility electric meter and the enrolled DERs must be fully operational for as long as they remain on the VPPT. If the customer anticipates that the DER will become non-operational for any reason for a period longer than 30-days, the customer must notify MCE at least 30-days prior to the start of the period of non-operation and provide MCE with the expected start and end dates of the non-operation. In such instances, and subject to MCE's verification and approval, MCE may suspend bill credits for up to 90-days. If the DER becomes non-operational for longer than 30-days, and the customer has not received approval for a temporary suspension of the bill credits, the customer may be removed from this VPPT and the bill credits will be discontinued immediately. If a DER unexpectedly becomes unresponsive, the customer may receive a notice via email from MCE or an MCE-authorized designee alerting them to the malfunction. Notified customers will have 30 days from the date of their notice to reconnect the unresponsive DER before MCE may disenroll the customer from the ~~Pilot VPP~~ and terminate future bill credits.
11. Participants ~~Customers participating in the Pilot and~~ who have completed a VPPA, agree to allow MCE and its authorized designees, to operate the DER consistent with this tariff ~~and the Pilot rules~~ and guidelines contained in the VPPA. A participating customer shall allow MCE to operate the DER at MCE's discretion, subject to the following limitations:
 - a. MCE may, at its discretion, dispatch the DERs (i.e., charge, discharge, load shift, load shed, load shape, load shimmy, and/or otherwise affect asset behavior), no more than recommended by the applicable DER vendor and/or manufacturer's warranty, except as outlined in the Special Conditions a and b below.
 - b. MCE and partners intend to program the DERs to shift customer load to non-peak hours to reduce cost and reliance on fossil fuel, except as described in Special Condition a below.
 - c. If connectivity to MCE's VPP is lost (including due to unplanned outages, emergencies, or other instance), DERs will be preprogrammed to go into an autonomous, self-operating mode until the situation is resolved and connectivity is resumed; see Special Conditions a, b, and c below.

16. MCE reserves the right to withhold incentives for any participating customers determined to be violating ~~the rules of the Pilot and/or~~ the terms and conditions of the governing VPPA.
17. Customers may elect to disenroll from the ~~Pilot VPP~~ and stop participation in VPPT at any time by contacting MCE at: virtualpowerplant@mcecleanenergy.org. All applicable terms and conditions of the governing VPPA will apply to any withdrawal. Termination of participation in VPPT, and the credits for participation, will be effective at the end of the customer's current billing cycle.
18. All ~~VPP participants customers participating in the Pilot~~ may elect to continue service under the VPPT upon expiration of their existing VPPA, through execution of a new VPPA.

Special Conditions for ~~Participants~~Customers Participating in the Pilot:

- a) Public Safety Power Shutoffs. In the event that PG&E calls a pending Public Safety Power Shutoff event (PSPS) in the vicinity of a customer, MCE will attempt to charge the participating energy storage system (ESS) that are expected to be impacted by the outage to full capacity in advance of the PSPS event. If necessary, MCE may charge the ESS to full capacity during any time of day, including "peak" periods, to maximize resiliency benefits for customers. Once the PSPS event has been resolved, and power has been restored, MCE will resume its normal dispatching of all DERs.
- b) Unplanned Grid Outages. MCE will instruct the participating DERs to operate independently in the event of an unplanned outage of the electric grid. If the DER is an ESS, it will be charged using on-site generation resources if available, and only discharged to provide power for on-site usage. Once grid power has been restored, MCE will resume its normal dispatching of the DER.
- c) Loss of Connectivity. It is the customer's responsibility to ensure continued connectivity of the DERs to the ~~MCE VPP~~. If MCE loses connectivity to a DER, such as due to interruption of internet or cellular connection, the DER will revert to autonomous control until connectivity is restored.

RATES AND INCENTIVES:

Rate Schedule: All usage billed under this schedule will be in accordance with the customer's otherwise-applicable MCE rate schedule.

Monthly Bill Credits: In addition, customers served under this schedule will receive a performance payment in the form of a monthly bill credit. The monthly bill credit amount will be determined as follows:

Residential MCE VPP Customer

Residential customers are compensated for participation in the MCE VPP ~~Pilot~~ based upon the number and type of DER devices enrolled by the customer ~~in the Pilot, as~~ detailed below. Equipment specifications (including make, model, etc.) will be detailed in the customer agreement. This Residential Monthly Advanced Payment (RMAP) will be paid monthly, subject to the maximum credit amount listed below, in the form of a bill credit. The monthly bill credit amount will be based on the RMAP Product Menu below.

RMAP Product Menu:

- \$2/month per enrolled smart major appliance (limited to eligible washers, dryers, dishwashers, refrigerators, freezers, and smart outlets with \geq 1kW load)

- \$5/month per enrolled eligible HAN/Smart Gateway
- \$5/month per enrolled eligible smart thermostat (limited to all-electric HVAC systems)
- \$5/month per enrolled eligible ~~m~~Mini-split air conditioner
- \$5/month per enrolled eligible heat pump hot water heater
- \$10/month per enrolled eligible Level 2 electric vehicle (EV) charger
- \$20/month per enrolled eligible bi-directional (i.e., V2B, V2G, V2X) Level 2 ~~electric vehicle EV~~ charger
- \$10/month per enrolled eligible battery energy storage system under 20 kWh
- \$20/month per enrolled eligible battery energy storage system equal or over 20 kWh

The maximum RMAP bill credit for a customer utilizing the an eligible Residential California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) ~~discounts customers is~~ \$50/month. The maximum RMAP bill credit for all other eligible ~~r~~Residential customers (i.e., who are not on a CARE or FERA rate schedule) is \$40/month.

Commercial or Industrial MCE VPP Customer

Commercial and Industrial customers are paid a Commercial Monthly Advanced Payment (CMAP) in the form of a bill credit as well as an annual performance payment of \$0.11 per kWh of measured load flexibility shift that is delivered to MCE's VPP annually. The monthly bill credit amount will be based on the CMAP Load Shift Calculation methodology and subject to the maximum credit amount. CMAP will be calculated for the Program Year (January 1st through December 31st) in which a customer is enrolled in the ~~Pilot~~VPP.

At the end of a Program Year, if the customer has generated more credit during the Program Year than has been paid to the customer through their CMAP for that Program Year, the customer is eligible to receive the balance owed, subject to the maximum bill credit amounts listed below (Program Year True-Up Payment). The Program Year True-Up Payment will be paid out as an additional bill credit prior to March 31st of the following Program Year. The calculation, as detailed below, is based on the total kWh of flexible load delivered to MCE's VPP, using MCE's Measurement and Verification (M&V) method and independently validated through third-party audit (as detailed in the VPPA).

CMAP Load Shift Calculation:

- FIRST PROGRAM YEAR:** In the First Program Year that the customer enrolls in the ~~VPP~~Pilot Program, MCE and/or MCE Authorized Designee will provide an Estimated Annual kWh of Load Shift for the proposed installations. Customer will receive a monthly bill credit valued at 33% of the Estimated Annual kWh Load Shift multiplied by \$0.11, then divided by 12, subject to the maximum bill credit listed below.
- AFTER THE FIRST PROGRAM YEAR:** For each Program Year thereafter, the previous Program Year's Aactual Verified kWh of Load Shift, as validated annually through MCE's M&V method, will be used to set the Delivered kWh of Load Shift Amount. Customer will receive a monthly bill credit valued at 50% of the ~~DK~~LSRA multiplied by \$0.11, then divided by 12, subject to the maximum bill credit listed below.

The maximum CMAP bill credit for an eligible commercial customer to receive is \$300/month. The maximum CMAP bill credit for an eligible industrial customer to receive is \$750/month.



Electric Schedule for Virtual Power Plant Tariff (VPPT)

APPLICABILITY: The Virtual Power Plant Tariff (VPPT) is available to MCE customers that have executed the MCE Virtual Power Plant Agreement (VPPA), and that have installed one or more qualified and fully operational distributed energy resources (DER) using an MCE-authorized Designee, with remote monitoring and dispatchable direct load control capabilities, behind the customer's utility electric meter, as verified by MCE. Customers that participate in MCE's Virtual Power Plant (VPP) Pilot can reduce their annual electricity costs, increase their resiliency, contribute to improving the health of their local grid conditions, support the advancement of cutting-edge innovative energy technology, while also earning valuable monthly bill credits for participation through this tariff.

SERVICE AREA: This schedule is available to MCE customers.

SUBSCRIPTION LIMIT: Subscription to this schedule is limited to 50,000 customers.

ELIGIBILITY: This optional schedule is available to MCE customers that meet the conditions detailed below. To be eligible for the VPPT, a customer must meet and maintain the following requirements:

1. Customers must have an active MCE residential, commercial, or industrial account with service address that is in good standing.
2. The customer account may not be enrolled in utility or third-party demand response programs or other behind-the-meter DER aggregations, including MCE's programs like Peak FLEXmarket. Accounts that are enrolled in a utility or other third-party demand response program or aggregation must disenroll in the third-party program prior to enrolling in the VPP. Enrollment can be determined using a standard form, the Customer Information Service Request (CISR) form.
3. Customers participating in the VPP must comply with the terms and conditions described in their governing VPPA, and have installed a qualified and fully operational DER compatible for monitoring and dispatchability by MCE pursuant to this tariff.
4. Customer DER installations must be compliant with the rules, stipulations, and restrictions of all manufacturer warranties and state and local codes and regulations, including applicable interconnection requirements. By enrolling in the VPP, customers warrant that they have all necessary authorizations and authority to enroll, and have provided any necessary notices to property owners, managers, or other stakeholders.
5. Customers must be enrolled in one of the following rate schedules:
 - a. Residential: E-TOU-A, E-TOU-B, E-TOU-C, E-TOU-D, EV2, E-6 and EM-TOU.
 - b. Commercial: B-1, B1-ST, B-6, B-10, B-19, B-20, BEV and SB.

Other rate schedules as determined by MCE will be noted at www.mcecleanenergy.org/rates

6. Customers who change onto an ineligible rate schedule will be removed from the VPPT and monthly bill credits will be discontinued immediately.
7. Customers must have an installed revenue grade meter, such as an AMI Meter (aka- "Smart Meter"), MV-90 Meter, or equivalent load meter capable of providing 15-minute interval data.
8. Customers must provide any information reasonably requested by MCE or its authorized designees that is necessary for MCE to administer this VPPT, such as specifications for pre-existing DER installations.
9. If a participating customer opts-out of MCE service, the customer will be immediately removed from the VPPT on the effective date of the opt out and will be ineligible for further bill credits, including any applicable Program Year True-Up Payment, as defined below.
10. All customers taking service under the VPPT must have their DER located behind the utility electric meter and the enrolled DERs must be fully operational for as long as they remain on the VPPT. If the customer anticipates that the DER will become non-operational for any reason for a period longer than 30-days, the customer must notify MCE at least 30-days prior to the start of the period of non-operation and provide MCE with the expected start and end dates of the non-operation. In such instances, and subject to MCE's verification and approval, MCE may suspend bill credits for up to 90-days. If the DER becomes non-operational for longer than 30-days, and the customer has not received approval for a temporary suspension of the bill credits, the customer may be removed from this VPPT and the bill credits will be discontinued immediately. If a DER unexpectedly becomes unresponsive, the customer may receive a notice via email from MCE or an MCE-authorized designee alerting them to the malfunction. Notified customers will have 30 days from the date of their notice to reconnect the unresponsive DER before MCE may disenroll the customer from the VPP and terminate future bill credits.
11. Participants who have completed a VPPA, agree to allow MCE and its authorized designees, to operate the DER consistent with this tariff and guidelines contained in the VPPA. A participating customer shall allow MCE to operate the DER at MCE's discretion, subject to the following limitations:
 - a. MCE may, at its discretion, dispatch the DERs (i.e., charge, discharge, load shift, load shed, load shape, load shimmy, and/or otherwise affect asset behavior), no more than recommended by the applicable DER vendor and/or manufacturer's warranty, except as outlined in the Special Conditions a and b below.
 - b. MCE and partners intend to program the DERs to shift customer load to non-peak hours to reduce cost and reliance on fossil fuel, except as described in Special Condition a below.
 - c. If connectivity to MCE's VPP is lost (including due to unplanned outages, emergencies, or other instance), DERs will be preprogrammed to go into an autonomous, self-operating mode until the situation is resolved and connectivity is resumed; see Special Conditions a, b, and c below.
16. MCE reserves the right to withhold incentives for any participating customers determined to be violating the terms and conditions of the governing VPPA.

17. Customers may elect to disenroll from the VPP and stop participation in VPPT at any time by contacting MCE at: virtualpowerplant@mcecleanenergy.org. All applicable terms and conditions of the governing VPPA will apply to any withdrawal. Termination of participation in VPPT, and the credits for participation, will be effective at the end of the customer's current billing cycle.
18. All VPP participants may elect to continue service under the VPPT upon expiration of their existing VPPA, through execution of a new VPPA.

Special Conditions for Participants:

- a) Public Safety Power Shutoffs. In the event that PG&E calls a pending Public Safety Power Shutoff event (PSPS) in the vicinity of a customer, MCE will attempt to charge the participating energy storage system (ESS) that are expected to be impacted by the outage to full capacity in advance of the PSPS event. If necessary, MCE may charge the ESS to full capacity during any time of day, including "peak" periods, to maximize resiliency benefits for customers. Once the PSPS event has been resolved, and power has been restored, MCE will resume its normal dispatching of all DERs.
- b) Unplanned Grid Outages. MCE will instruct the participating DERs to operate independently in the event of an unplanned outage of the electric grid. If the DER is an ESS, it will be charged using on-site generation resources if available, and only discharged to provide power for on-site usage. Once grid power has been restored, MCE will resume its normal dispatching of the DER.
- c) Loss of Connectivity. It is the customer's responsibility to ensure continued connectivity of the DERs to the VPP. If MCE loses connectivity to a DER, such as due to interruption of internet or cellular connection, the DER will revert to autonomous control until connectivity is restored.

RATES AND INCENTIVES:

Rate Schedule: All usage billed under this schedule will be in accordance with the customer's otherwise-applicable MCE rate schedule.

Monthly Bill Credits: In addition, customers served under this schedule will receive a performance payment in the form of a monthly bill credit. The monthly bill credit amount will be determined as follows:

Residential MCE VPP Customer

Residential customers are compensated for participation in the MCE VPP based upon the number and type of DER devices enrolled by the customer, detailed below. Equipment specifications (including make, model, etc.) will be detailed in the customer agreement. This Residential Monthly Advanced Payment (RMAP) will be paid monthly, subject to the maximum credit amount listed below, in the form of a bill credit. The monthly bill credit amount will be based on the RMAP Product Menu below.

RMAP Product Menu:

- \$2/month per enrolled smart major appliance (limited to eligible washers, dryers, dishwashers, refrigerators, freezers, and smart outlets with ≥ 1 kW load)
- \$5/month per enrolled eligible HAN/Smart Gateway
- \$5/month per enrolled eligible smart thermostat (limited to all-electric HVAC systems)
- \$5/month per enrolled eligible mini-split air conditioner
- \$5/month per enrolled eligible heat pump hot water heater
- \$10/month per enrolled eligible Level 2 electric vehicle (EV) charger
- \$20/month per enrolled eligible bi-directional (i.e., V2B, V2G, V2X) Level 2 EV charger
- \$10/month per enrolled eligible battery energy storage system under 20 kWh
- \$20/month per enrolled eligible battery energy storage system equal or over 20 kWh

The maximum RMAP bill credit for a customer utilizing the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) discounts is \$50/month. The maximum RMAP bill credit for all other eligible residential customers (i.e., who are not on a CARE or FERA rate schedule) is \$40/month.

Commercial or Industrial MCE VPP Customer

Commercial and Industrial customers are paid a Commercial Monthly Advanced Payment (CMAP) in the form of a bill credit as well as an annual performance payment of \$0.11 per kWh of measured load flexibility shift that is delivered to MCE's VPP annually. The monthly bill credit amount will be based on the CMAP Load Shift Calculation methodology and subject to the maximum credit amount. CMAP will be calculated for the Program Year (January 1st through December 31st) in which a customer is enrolled in the VPP.

At the end of a Program Year, if the customer has generated more credit during the Program Year than has been paid to the customer through their CMAP for that Program Year, the customer is eligible to receive the balance owed, subject to the maximum bill credit amounts listed below (Program Year True-Up Payment). The Program Year True-Up Payment will be paid out as an additional bill credit prior to March 31st of the following Program Year. The calculation, as detailed below, is based on the total kWh of flexible load delivered to MCE's VPP, using MCE's Measurement and Verification (M&V) method and independently validated through third-party audit (as detailed in the VPPA).

CMAP Load Shift Calculation:

- A. **FIRST PROGRAM YEAR:** In the First Program Year that the customer enrolls in the VPP, MCE and/or MCE Authorized Designee will provide an Estimated Annual kWh of Load Shift for the proposed installations. Customer will receive a monthly bill credit valued at 33% of the Estimated Annual kWh Load Shift multiplied by \$0.11, then divided by 12, subject to the maximum bill credit listed below.
- B. **AFTER THE FIRST PROGRAM YEAR:** For each Program Year thereafter, the previous Program Year's Actual Verified kWh of Load Shift, as validated annually through MCE's M&V method, will be used to set the Delivered kWh of Load Shift Amount. Customer will receive a monthly bill credit valued at 50% of the DKLSA multiplied by \$0.11, then divided by 12, subject to the maximum bill credit listed below.

The maximum CMAP bill credit for an eligible commercial customer to receive is \$300/month. The maximum CMAP bill credit for an eligible industrial customer to receive is \$750/month.