



MCE Technical Committee Meeting
Friday, October 3, 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 Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)

Agenda Page 2 of 2

C.1. Approval of 9.5.25 Meeting Minutes

6. Energy Storage Service Agreement with Roccasecca BESS, LLC (Discussion/Action)
7. Renewable Power Purchase Agreement with Buena Vista Energy, LLC (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, September 5, 2025
10:00 A.M.

Present: Stephanie Andre, City of Larkspur
Dion Bailey, City of Hercules
Devin Murphy, City of Pinole
Gabe Quinto, City of El Cerrito
Amanda Szakats, City of Pleasant Hill
Cesar Zepeda, City of Richmond

Absent: Charles Palmares, City of Vallejo

**Staff
& Others:** Jessica Brooks, Lead Board Clerk and Executive Assistant
CB Hall, Principal Power Procurement Manager
Vicken Kasarjian, Chief Operations Officer
Paul Krebs, Senior Power Procurement Manager
Caroline Lavenue, Legal Counsel II
Tanya Lomas, Board Clerk Associate
John McCormick, City of Lafayette
Alexandra McGee, VP of Strategic Initiatives
Catalina Murphy, General Counsel
Ashley Muth, Internal Operations Associate
Justine Parmelee, VP of Internal Operations
Mike Rodriguez-Vargas, Internal Operations Assistant
Enyonam Senyo-Mensah, Internal Operations Manager
Dan Settlemyer, Internal Operations Associate
Dawn Weisz, Chief Executive Officer
Michael Wong, Senior Power Procurement Manager

1. Roll Call

Chair Murphy called the regular Technical Committee meeting to order at 10:02 a.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no comments.

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)

COO, Vicken Kasarjian, introduced this item and addressed questions from Committee members.

5. Consent Calendar (Discussion/Action)

C.1 Approval of 6.6.25 Meeting Minutes

C.2 2024 MCE Power Source Disclosure Attestation

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

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

6. Renewable Power Purchase Agreement with Mulqueeney Wind Energy LLC (Discussion/Action)

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

Chair Murphy opened the public comment period and comments were made by members of the public, Dan Segedin and Bruce Ackerman.

Action: It was M/S/C (Bailey/Szakats) to **authorize execution of the Renewable Power Purchase Agreement with Mulqueeney Wind Energy, LLC.** Motion carried by unanimous roll call vote. (Absent: Palmares).

7. Amended Virtual Power Plant Tariff (Discussion/Action)

Alexandra McGee, VP of Strategic Initiatives, presented this item and addressed questions from Committee members.

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

Action: It was M/S/C (Zepeda/Andre) to **approve the amended Virtual Power Plant Tariff.** Motion carried by unanimous roll call vote. (Absent: Palmares).

8. Committee & Staff Matters (Discussion)

There were no comments.

9. Adjournment

Chair Murphy adjourned the meeting at 10:44 a.m. to the next scheduled Technical Committee Meeting on October 3, 2025.

DRAFT

Devin Murphy, Chair

Attest:

Dawn Weisz, Secretary



October 3, 2025

TO: MCE Technical Committee

FROM: Stephen Mariani, Senior Power Procurement Manager

RE: Energy Storage Service Agreement with Roccasecca BESS, LLC (Agenda Item #06)

ATTACHMENTS: A. Energy Storage Service Agreement between MCE and Roccasecca BESS, LLC Presentation
B. Energy Storage Service Agreement between MCE and Roccasecca BESS, LLC (Redacted)

Dear Technical Committee Members:

Summary:

MCE staff received a bilateral offer from Roccasecca Battery Energy Storage System ("BESS"), LLC in the spring of this year for a new 126.59 MW 4-hour duration battery facility in Clark County, NV.

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

Per the attached Energy Storage Service Agreement ("ESSA"), MCE would have rights to the associated energy and ancillary services products and resource adequacy ("RA") capacity from Roccasecca BESS over a 15-year term.

The proposed facility would also satisfy MCE's Mid-term Reliability ("MTR") procurement obligations for generic capacity, pursuant to California Public Utilities Commission ("CPUC") decisions D.21-06-035 and D.23-02-040. The project also provides flexibility to charge and discharge energy beneficially to shape MCE's supply curve to align with its load profile.

Rationale:

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

- The BESS project can be charged during low-price, high-renewable generation periods and dispatched in high-price, high-demand periods.
- RA capacity delivered by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications, and commercial operation date satisfy the requirements detailed in the CPUC MTR mandated procurement order.

Facility / Contract Overview:

- Facility Name: Roccasecca BESS
- Facility Size/Type: 126.59 MW 4-hour duration, lithium-ion BESS
- Products under proposed contract: Energy, RA, Ancillary Services
- Price: Fixed with no escalation over the delivery term
- Project location: Clark County, Nevada
- Guaranteed Commercial Operation Date: March 1, 2027
- Contract Term: 15 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: Monetary payment of \$100,000 to host community and \$30,000 to MCE for community benefits on or before the commercial operations 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 Fiscal Year 2026/27.

Recommendation:

Authorize execution of the Energy Storage Service Agreement between MCE and Roccasecca BESS, LLC.



Energy Storage Service Agreement with Roccasecca BESS, LLC

MCE Technical Committee
October 3, 2025



Overview of Today's Presentation

- 2025 Procurement Goals and Target Resources
- Roccasecca BESS Project Overview
- Energy Storage Service Agreement Overview
- Recommendation
- Q & A

2025 Procurement Goals and Target Resources

MCE Goals

- Increase alignment of hourly load and supply profiles
- Increase Product Content Category 1 (PCC1) Renewables Supply
- Add Resource Adequacy (RA) supply to the portfolio
- Add resources to fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decisions D.21-06-035 and D.23-02-040

MCE Target Resources

- Renewable (PCC1) Energy
- Resources that add Resource Adequacy (RA)
- Resources that fill remaining needs for MTR requirements

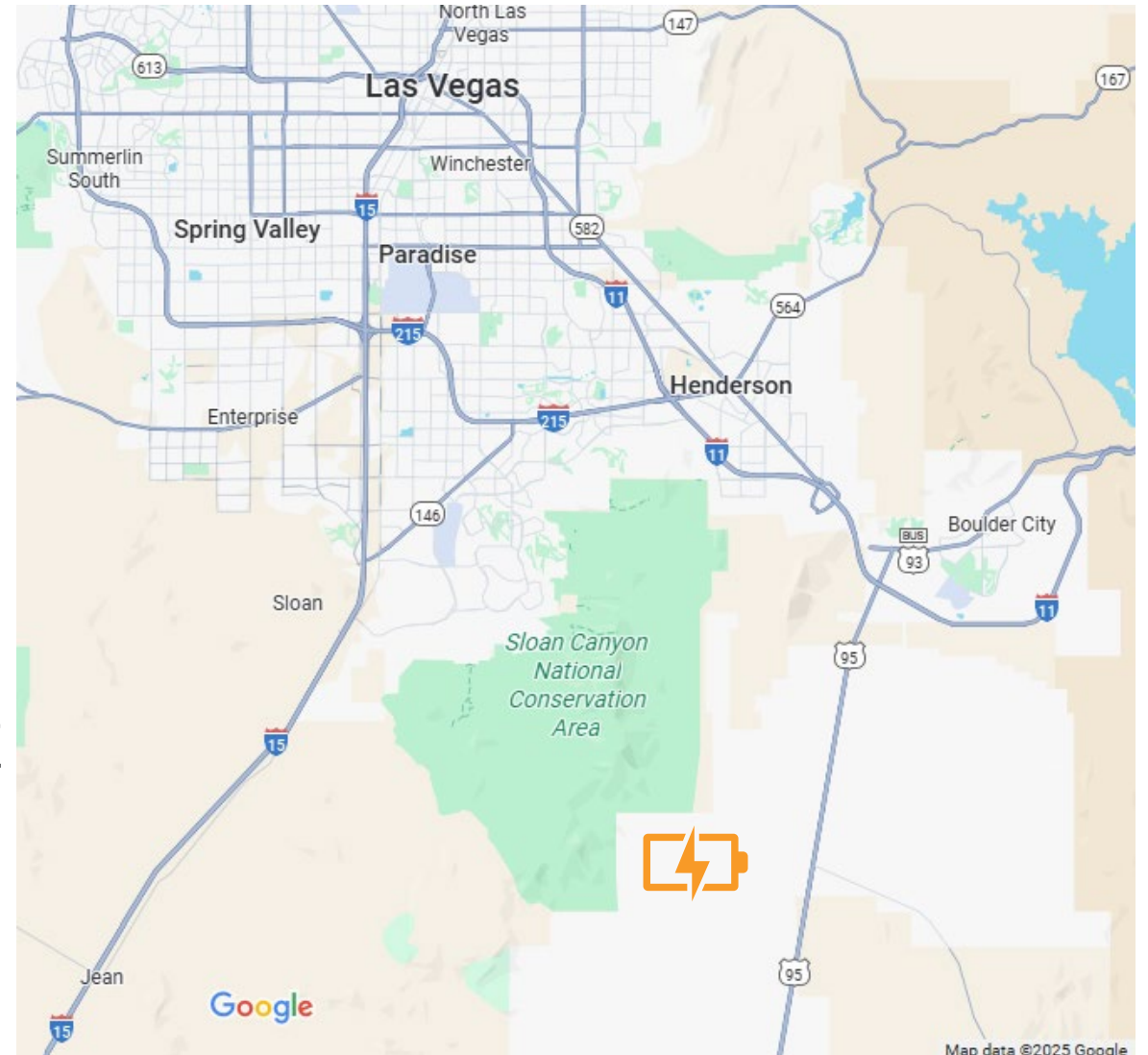
Roccasecca Battery Project Overview

- Technology: Stand-alone Battery Energy Storage System
- Location: Boulder City, NV (Southern NV)
- Size: 126.59 MW / 506.36 MWh (4-hour duration)
- Owner/Operator: IOWN Renewables
- Expected Online Date: 3/1/2027

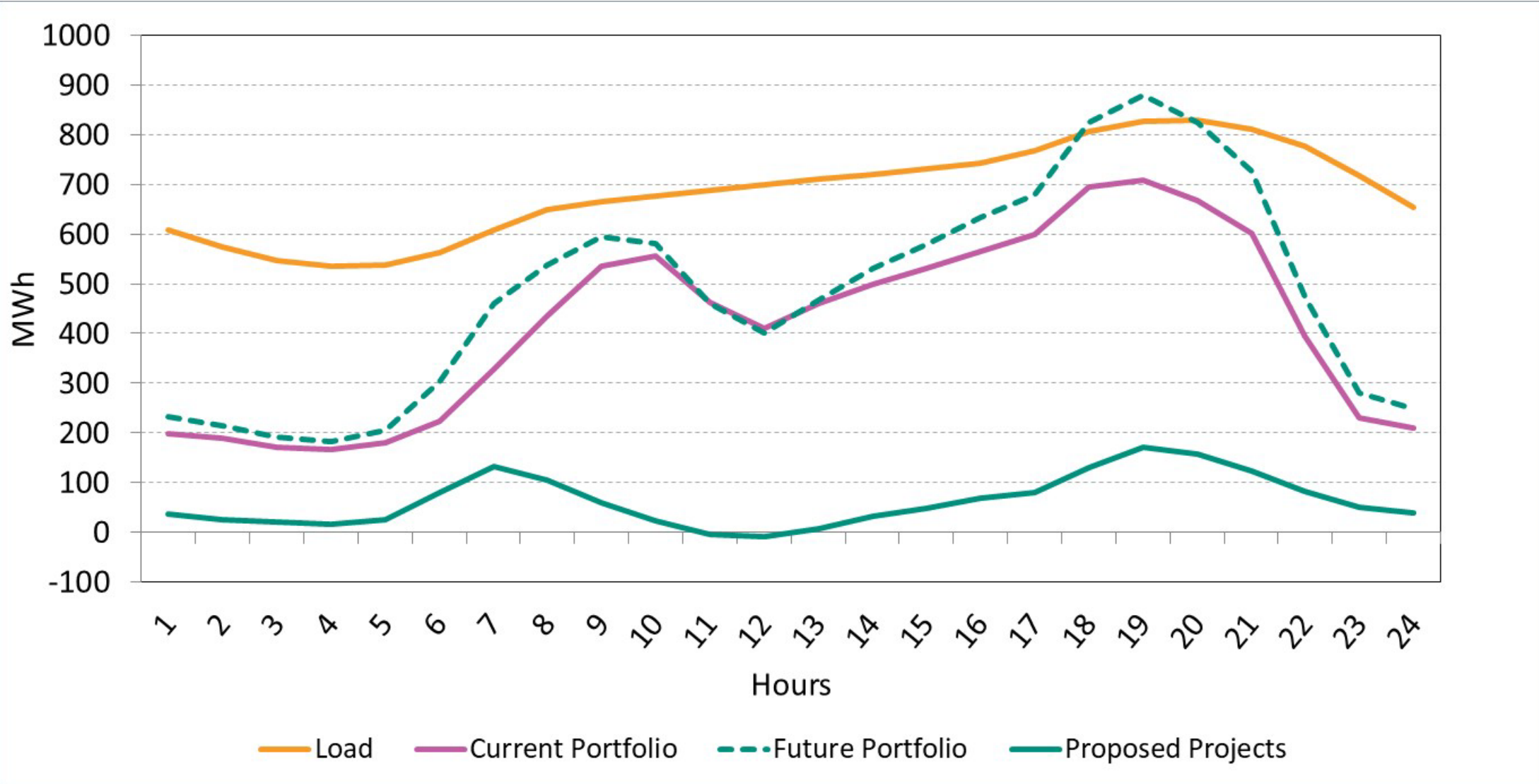


Energy Storage Service Agreement Overview

- “Full-toll” contract
 - Charging & Discharging Energy
 - RA Capacity Attributes
 - Ancillary Services
- 15-year term
- No credit/collateral obligations for MCE



MCE Load-Supply Balance



Notable Terms and Conditions

- Financial incentives for seller performance
 - Guaranteed storage availability and guaranteed efficiency rates
 - RA delivery guarantee
 - Daily delay damages
- Project Labor Agreement, prevailing wage requirement, forced labor restriction
- Security deposits to ensure milestones are met
- Direct Community Benefits contributions of \$30,000 to MCE and \$100,000 to host community
- Fixed price over the contract term, no escalation

Recommendation

Approve:

Energy Storage Service Agreement between MCE and Roccasecca BESS, LLC

Rationale:

- The project type, size, and attributes contribute towards MCE's long-term power portfolio needs and compliance obligations.
- Project is in late stages of development and soon to begin construction.
- Project fulfills remaining needs for MTR compliance mandates in limited market for alternatives.



Thank you!



mceCleanEnergy.org
info@mceCleanEnergy.org

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Roccasecca BESS LLC, a Delaware limited liability company (“**Seller**”)

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

Description of Facility: A 126.59 MW/506.36 MWh battery energy storage facility located in Clark County, in the State of Nevada, as further described in Exhibit A (the “**Facility**”), and subject to reduction in capacity pursuant to Paragraph 5 in Exhibit B.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
Executed Interconnection Agreement	Complete
Obtain Federal and State Discretionary Permits	Complete
Network Upgrades Completed	████████
Procure Major Equipment	████████
Expected Construction Start Date	████████
Initial Synchronization	8/15/2026
Expected Commercial Operation Date	3/1/2027
Partial Capacity Deliverability Status Obtained	Complete

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

Contract Capacity: 126.59 MW for four (4) hour discharge

Storage Contract Output: 506.36 MWh

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████

7		
8		
9		
10		
11		
12		
13		
14		
15		

Contract Price

The Contract Price shall be:

Contract Year	Contract Price
1 – 15	

Product:

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

Scheduling Coordinator: Buyer or Buyer's agent

Development Security and Performance Security

Development Security:

Performance Security:


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Exhibits:

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Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
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Exhibit E	Progress Reporting Form
Exhibit F	Form of Monthly Forecast
Exhibit G	Material Permits
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	Storage Capacity Tests
Exhibit P	Storage Facility Availability
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Other Seller Commitments
Exhibit T	Diversity Reporting
Exhibit U	

ENERGY STORAGE SERVICE AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

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

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

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

“**Ancillary Services**” means those Ancillary Services (as defined in the CAISO Tariff) set forth in Section 8.

“**Annual Average State of Charge**” has the meaning set forth in Exhibit Q.

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

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

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

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

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

“Buyer” means Marin Clean Energy, a California joint powers authority.

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

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

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

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

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

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

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of the Facility to charge, discharge and

deliver to the Delivery Point energy, at a particular moment, and that can be purchased, sold and/or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

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

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Fitch or Moody’s.

“Curtailment Order” means any of the following:

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

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

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

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

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

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

"Damage Payment" means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet payable to Buyer pursuant to the terms of this Agreement.

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

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

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

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

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

"Delivery Term" has the meaning set forth on the Cover Sheet.

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

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

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

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

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

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

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

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

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

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

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

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

“Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for

monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Metering Point and the amount of Discharging Energy delivered to the Delivery Point. For clarity, the Facility may contain multiple measurement devices that will make up the Facility Meter, including the CAISO Approved Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

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

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

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

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

“Full Capacity Deliverability Status” has the meaning as such term is defined in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

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

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

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

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

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

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

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

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

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

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

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

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

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

“Interconnection Agreement” means that certain Large Generator Interconnection Agreement, dated as of December 3, 2018, as amended, by and among Seller, Participating Transmission Operator and CAISO, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

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

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or Seller’s Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or the U.S. branch of a foreign bank, which such bank having assets of at least [REDACTED] and with such bank having a Credit Rating of [REDACTED] in a form substantially similar to the letter of credit set forth in Exhibit K. To the extent Seller’s preferred standby letter of credit issuer requests reasonable changes to the form of Exhibit K, Buyer will endeavor to accommodate such requested changes in good faith.

“Licensed Professional Engineer” means (a) any of (i) Leidos, (ii) Black & Veatch, (iii) Burns & McDonnell, (iv) DNV GL, or (v) ICF; or (b) any other independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

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

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

“Master File” has the meaning set forth in the CAISO Tariff.

“Material Permit” means each permit set forth on Exhibit G.

“Maximum Charging Capacity” has the meaning set forth in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in Exhibit A.

“Maximum State of Charge” has the meaning set forth in Exhibit Q.

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

“Minimum State of Charge” has the meaning set forth in Exhibit Q.

“Monthly Forecast” has the meaning set forth in Section 4.3(a).

“Moody’s” means Moody’s Investors Service, Inc., or its successors.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

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

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

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

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

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

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

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

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

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

“Outside Guaranteed COD” has the meaning set forth in Exhibit B.

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

“Pacific Prevailing Time” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“Partial Capacity Deliverability Status” has the meaning as such term is defined in the CAISO Tariff.

“Partial Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Partial Capacity Deliverability Status.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“Party” or **“Parties”** has the meaning set forth in the Preamble.

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

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

(a) (i) A tangible net worth of [REDACTED] and has demonstrated compliance with such financial requirements, [REDACTED]

[REDACTED] to Buyer's reasonable satisfaction, [REDACTED] and is not on any sanction list maintained and published by the U.S. Department of the Treasury's Office of Foreign Assets Control, or (iii) a Credit Rating of [REDACTED] and (b) Has [REDACTED] of experience in the ownership and operations of storage facilities similar to the Facility, or has retained a third-party with such operations experience to operate the Facility.

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

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

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

[REDACTED]

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

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

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

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

"Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

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

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Remedial Action Plan” has the meaning in Section 2.4.

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

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes associated with the Facility.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings or Laws may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

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

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

binding Schedule, market instruction or CAISO dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.8.

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

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Capacity Attributes are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

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

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

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

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

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

“**Station Use**” means energy that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Seller initiated test, Buyer initiated test, or pursuant to a Charging Notice or Discharging Notice.

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

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

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

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

[REDACTED]

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

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

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

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

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

[REDACTED]

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

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

“Trial Operations” means, the period commencing at Initial Synchronization and ending on the Commercial Operation Date.

“Ultimate Parent” means [REDACTED]

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

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

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

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

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

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

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); *provided, however*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent.**

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

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

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

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

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

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

(vi) All applicable permits and government approvals required for the commencement of operation of the Facility have been obtained, but excluding minor authorizations, approvals or permits that are expected to be obtained in the ordinary course, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

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

(viii) Seller has achieved Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the Facility and provided Buyer a copy of the CAISO's Full Capacity Deliverability Status Finding or Partial Capacity Deliverability Status Finding for a capacity at least equal to the Contract Capacity;

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

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

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

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide a Progress Report to Buyer in the form set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

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

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall

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

3.2 **Capacity Attributes.** Seller shall have obtained Partial Capacity Deliverability Status by the Commercial Operation Date. Seller shall maintain either Partial Capacity Deliverability Status or Full Capacity Deliverability Status at all times during the Delivery Term in the amount of the Contract Capacity, subject to Section 3.2(b) below. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Partial Capacity Deliverability Status or Full Capacity Deliverability Status.

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

(b) Throughout the Delivery Term and subject to Section 3.5, Seller shall use commercially reasonable efforts to maintain Partial Capacity Deliverability Status or 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, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.3 **Resource Adequacy Failure.** For each Showing Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to [REDACTED]

[REDACTED] Seller may provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M [REDACTED] before the applicable CPUC Showing Month. Replacement RA provided by Seller in compliance with this provision shall be considered Delivered RA. The payment of the RA Deficiency Amount as described above shall constitute the sole and exclusive remedies of Buyer for any failure by Seller to deliver the Guaranteed RA Amount for any Showing Month. [REDACTED]

As used above:

“Administrative NQC Reduction” means a reduction in the maximum achievable Net Qualifying Capacity of the Facility due to a reduction that has been generally applied to resources materially similar to the Facility in terms of type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates or any changes with respect to storage duration requirements.

“Delivered RA” means the monthly RA capacity made available for delivery at the Delivery Point, expressed in kW.

“Guaranteed RA Amount” means an amount equal to the Qualifying Capacity of an energy storage facility with an installed capacity equal to the Contract Capacity based on four (4) hour discharge for each hour of the Relevant Day in the applicable Showing Month, less an amount equal to the Administrative NQC Reduction, if any, for the applicable Showing Month.

“RA Guarantee Date” means the Commercial Operation Date.

“Relevant Day” means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Rulings.

“Replacement Price” means (a) 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 (b) absent a purchase, 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.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, with respect to the applicable Showing Month, including, as applicable, hours of availability and Flexible Capacity Category, but excluding any Local RAR. Replacement RA does not need to be from an incremental resource for purposes of CPUC Decision 21-06-035.

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

(a) 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.

(i) Seller agrees to reasonably cooperate with Buyer to assist Buyer with using the Contract Capacity to meet the procurement mandates set forth in CPUC D.21-06-035, to the extent applicable;

(ii) The Facility shall be incremental to the CPUC's baseline list identified in CPUC Decision 21-06-035 as of the Effective Date of this Agreement;

(iii) The Product shall include the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource, including for purposes of CPUC Decision 21-06-035 and Decision 23-02-040;

(iv) 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, including for purposes of CPUC Decision 21-06-035 and Decision 23-02-040; and

(b) Seller, upon reasonable request of Buyer, will provide additional information and documentation 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, 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 this 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 this Agreement and is eligible for confidential or protective treatment under the requesting regulatory agency's rules, orders, decisions on confidential or protected information.

3.5 **Compliance Expenditure Cap.**

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

required to bear during the term of this Agreement to comply with all of such obligations shall be capped at [REDACTED] (the “**Compliance Expenditure Cap**”). Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within thirty (30) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, Seller shall be excused from the corresponding Compliance Actions under this Agreement.

ARTICLE 4

OBLIGATIONS AND DELIVERIES

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

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

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

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

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

(b) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer and Buyer's SC (if applicable) with a non-binding forecast of Storage Capacity for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Storage Capacity for each hour of each applicable day. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer's SC and Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N. If Seller fails to provide a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer and the SC (if applicable) shall rely on any Real-Time Forecast provided in accordance with Section 4.3(c) or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

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

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

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall notify the SC of Forced Facility Outages promptly but no later than the time periods required by the CAISO Tariff and the CAISO's outage management rules and Seller shall keep the SC informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.


(e) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Bids for the electric energy charged and discharged by the Facility.

4.4 Dispatch Down/Curtailment.

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

(b) Reserved.

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



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

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

4.5 Charging Energy Management.

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

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

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

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

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

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

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

4.6 **Reduction in Delivery Obligation.**

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

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

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

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

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

4.7 [Reserved].

4.8 Storage Availability.

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability of no less than [REDACTED] (the "Guaranteed Storage Availability"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's monthly payment for the Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P).

4.9 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit Q. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit Q. Any testing of the Facility requested by Buyer after the Commercial Operation Date shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any test of the Facility that is not a Buyer Dispatched Test, including all tests conducted prior to Commercial Operation, all required annual tests pursuant to Section B ("Subsequent Storage Capacity Tests") in Exhibit Q, any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below seventy-five percent (75%) of the Storage Contract Capacity set forth on the Cover Sheet, any test required by CAISO (including any test required to maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest) shall be deemed a "Seller Initiated Test". [REDACTED]

(b) Buyer shall have the right to send one or more representative(s) to witness at the Site or via webinar or video call all Storage Capacity Tests, provided that Buyer's exercise of this right shall not alter the schedule for conducting or completing the Storage Capacity Test. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test.

(c) No later than five (5) days following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit Q. The Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test shall become the new Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the then-effective Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under this Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible (collectively, the "**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide, or any third party use of, the Dedicated Interconnection Capacity unless such failure is the result of a Force Majeure Event or inability of the transmission system to accept energy deliveries at the Delivery Point.

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.

4.11 **Station Use**. Seller shall be responsible for providing all energy to serve Station Use (including paying the cost of any energy procured to serve Station Use) and all Station Use will be provided in accordance with applicable law, including in accordance with the applicable tariff of the local utility providing retail service to the Site. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility.

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

ARTICLE 5 TAXES

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

remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

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

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for

Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld, conditioned, or delayed. 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, conditioned, or delayed. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** If either Party has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request [REDACTED] Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Within ten (10) days after the end of each month of the Delivery Term, Seller shall deliver a detailed invoice to Buyer for the amount due for Product delivered during such month. Each invoice shall include all information necessary to confirm the amounts due, including (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), (b) the Contract Price applicable to such Product, and all adjustments to Seller's monthly payment made in accordance with the Agreement, including Section 3.3 and Exhibit C. Upon reasonable request of Buyer, Seller shall provide access to any records, including invoices or settlement data from the CAISO, reasonably necessary to verify the accuracy of any amount. The invoice shall be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices; *provided*, however, that the Parties acknowledge and agree that if the CAISO metering and transaction data showing the

amount of Product delivered by the Facility for any Settlement Period during the prior month is not available or final at the time each monthly invoice is delivered pursuant to this Section 8.1 and that the monthly invoice will be based on such data as are available at the time. When (i) CAISO metering and transaction data showing the amount of Product delivered by the Facility for each Settlement Period during the applicable month, including the amount of Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and (ii) the amount of Replacement RA delivered to Buyer (if any), become available, Seller will true up such invoices to reflect any differences between Seller's records and the data received from CAISO, and an appropriate credit or charge will be added to the invoice delivered by Seller for the following month.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least three (3) years from the termination of this Agreement and payment of all invoices, or such longer period if otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

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

settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within [REDACTED] days of the Effective Date. Seller shall maintain the Development Security in full force and effect. [REDACTED]

[REDACTED] Upon the earlier of (i) (and contemporaneously with) Seller's delivery of the Performance Security (which may include Seller's election to amend the Letter of Credit comprising the Development Security to an amount equal to the amount of the Performance Security required pursuant to Section 8.8 or to apply all or a portion of the Development Security towards the Performance Security pursuant to Section 8.8), or (ii) [REDACTED] after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement and/or held and applied towards the Performance Security, and Seller's obligation to maintain the Development Security shall cease. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such

Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have [REDACTED] to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller may elect amend the Letter of Credit or to apply all or a portion of the Development Security posted in accordance with Section 8.7 towards the Performance Security required to be posted pursuant to this Section 8.8. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. [REDACTED]

[REDACTED] If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have [REDACTED] to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

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

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

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

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

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

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

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

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means), at the time indicated by the time stamp upon delivery without any bounce back or rejection, and if after 5 p.m. Pacific Prevailing Time, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or

dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act, event, or circumstance occurring after the Effective Date that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement, if such act, event, or circumstance despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic (including the impacts of the disease designated COVID-19 or the related virus designated SARS-CoV-2, except for impacts arising prior to the Effective Date); quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; detention of equipment comprising the Facility by the United States Customs and Border Patrol, unless such equipment was detained due to violation of Law; or strikes or other labor difficulties caused or suffered by a Party or any third party, except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs and events constituting a Supply Chain Event) Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee party; (iv) a Curtailment Order or Curtailment Period, except to the extent such Curtailment Order or Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such

equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension pursuant to the Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date, or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(ii) and, subject to the Pre-COD Limitation of Liability, receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its material obligations hereunder, and the impacted Party has claimed and received relief from performance of such obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party.

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

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.3, (2) [REDACTED] the exclusive remedies for which are set forth in Section 4.8 and Exhibit C, and (3) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Exhibit C, and (4) failures related to the Contract Capacity that do not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in Exhibit C), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) The failure of Seller to achieve Construction Start by [REDACTED]
[REDACTED]

(ii) The failure of Seller to achieve Commercial Operation by [REDACTED]

(iii) [REDACTED]

(iv) if, Seller fails to maintain an average Efficiency Rate of at least [REDACTED]

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

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

(vii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice thereof from Buyer, and expiration of the cure periods set forth therein, with respect to the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment, or a Termination Payment, as applicable;

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of [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 sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that

terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(i) Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

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

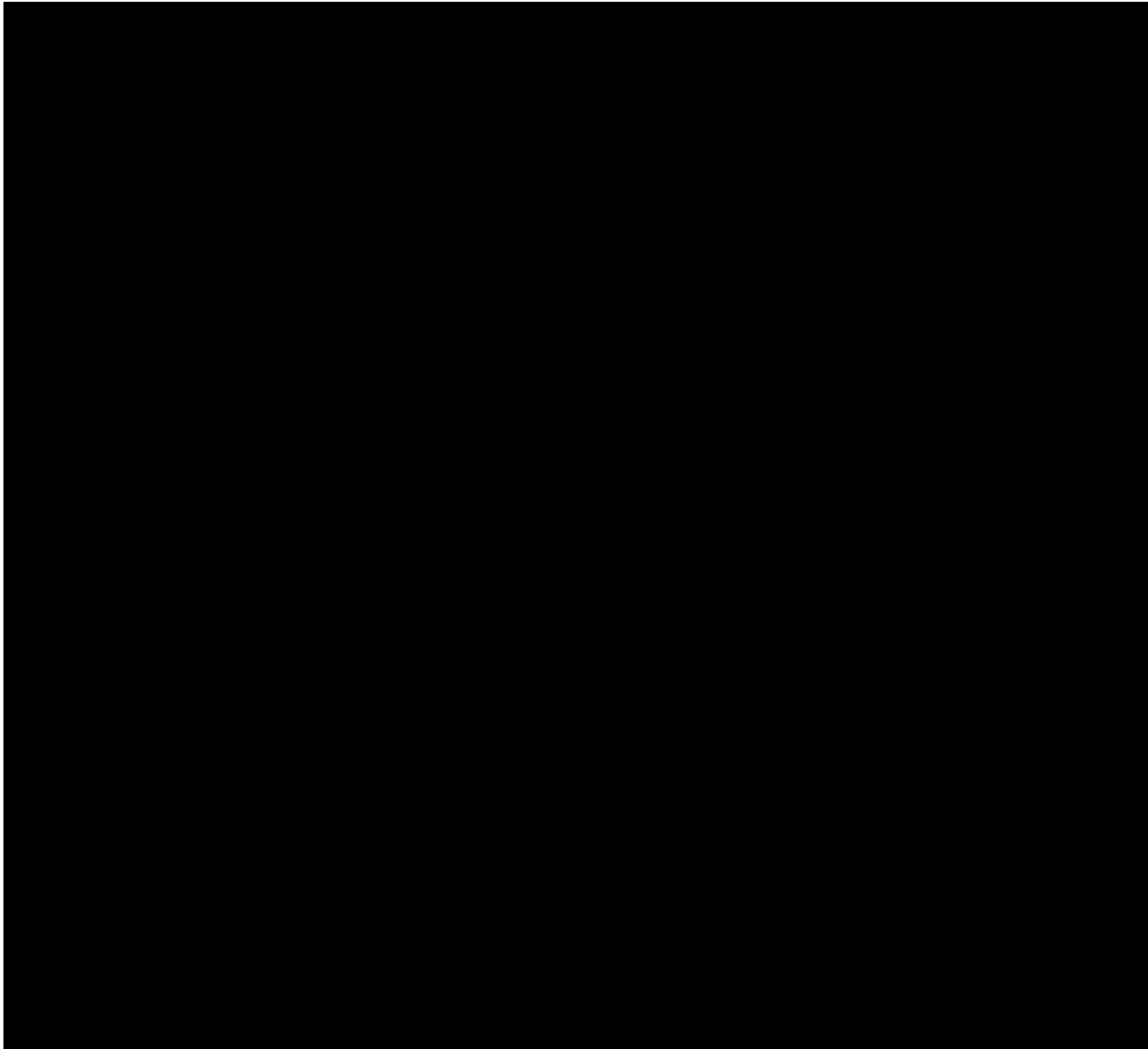
11.3 **Termination Payment.** The termination payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from

the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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



ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

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

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.3, 4.8, 11.2, 11.3 AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to non-discrimination, non-preference and conflict of interest.

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

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

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

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions

of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under this Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** To the extent applicable to the Facility, Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall require its EPC contractor(s) to enter into one or more project labor agreements for construction of the Facility. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed project labor agreements, or similar agreements, a

certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

13.5 **Diversity Reporting.** As applicable to the Facility, Seller agrees to complete the Supplier Diversity and Labor Practices questionnaire available at <https://forms.gle/4VahoVD3h7pvE4dF6>, as may be updated from time to time, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar reasonable regular reporting requirements related to diversity and labor practices from time to time. A current example of the Supplier Diversity and Labor Practices questionnaire is attached as Exhibit T.

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

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, 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; *provided*, a Change of Control of Seller shall not require Buyer's consent and shall not be subject to Sections 14.2 or 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall pay Buyer's reasonable costs, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Facility. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement.

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

(a) Buyer shall give notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be

provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed), 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 amount of time reasonably necessary to (A) cure such Event of Default (up to a maximum of ninety (90) days) or (B) complete such foreclosure proceedings (not to exceed one hundred eighty (180) days) following the end of such prohibition;

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

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

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

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

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

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

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

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

(f) If this Agreement is transferred to Lender pursuant to subsection (b) above,

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

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

(ii) Not assume this Agreement.

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

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

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve the dispute arising hereunder within thirty (30) days of initiating such discussions, the Parties shall submit the dispute to meditation prior to seeking any and all remedies available at Law or in equity.

ARTICLE 16 INDEMNIFICATION

16.1 Mutual Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, and anyone directly or indirectly employed by either the Indemnifying Party or anyone that they control; (collectively, "**Indemnifiable Losses**").

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

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

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

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any

payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

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

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

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

cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and bodily injury insurance, with a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and a general aggregate of not less than Five Million Dollars (\$5,000,000), and to provide contractual liability in said amount, covering Seller's insurable obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella/excess insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000) each occurrence and in the annual aggregate. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest (separation of insureds clause) provisions. Insurance limits may be procured and evidenced through Seller's choice of primary and excess policies.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance shall be One Million Dollars (\$1,000,000) for bodily injury by accident-each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) disease policy limit and One Million Dollar (\$1,000,000) disease-each employee will apply.

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

(d) Commercial Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) each accident and in the annual aggregate. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of this Agreement.

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, pollution liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the annual aggregate, naming the Seller (and Lender if any) as additional insured.

(g) Subcontractor Insurance. Seller shall require its EPC contractor(s) to carry the same types of insurance as Seller. All EPC contractor(s) shall include Seller as an additional

insured to (i) commercial general liability insurance; and (ii) business auto insurance for bodily injury and property damage. All EPC contractor(s) shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation of coverage, except ten (10) days for non-payment of premium. General Liability and Business Auto insurance shall be primary coverage without right of contribution from any insurance of Buyer. Umbrella/Excess insurance shall be non-contributory. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18

CONFIDENTIAL INFORMATION

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

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of applicable Law or regulation, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public

Records Act (Government Code Section 7920 et seq.), and Buyer shall incur no liability arising out of any disclosure of such information or documentation provided in connection with this Agreement, including Confidential Information, that is subject to public disclosure under the California Public Records Act.

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

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

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this Section and to the extent the information is not prohibited by law from disclosure, press release does not include (i) records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's board of directors; documentation submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.), (ii) records released by Seller to advise investors and potential investors, financial statements, disclosures, statements, and other documents and releases made or required in conjunction with financing, and issuances of securities, stocks and bonds, or (iii) any press release issued by Ultimate Parent to the extent such release may be required by applicable Law or applicable securities or exchange rules.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared

through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

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

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

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

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

original executed signature page.

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

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

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

19.12 **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.

[Signatures on following page]

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

**ROCCASECCA BESS 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: Roccasecca BESS Battery Energy Storage Facility

Site includes all or some of the following APNs:



County: Clark County, Nevada

Type of Facility: Battery Energy Storage

Energy Management Software: The Facility shall include communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by Buyer in accordance with the Agreement and/or the CAISO, including through ADS. Seller must provide remotely operable, 2-4 second timestamps, data historian (6 months of on-site storage and 24 months of cloud storage), SCADA/AGC communication and operability with the Facility controller and offtaker, and include the following applications/modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Spinning Reserve

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

Operating Characteristics of Facility:

Maximum Stored Energy Level at COD (MWh): 506.36 MWh

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

Maximum Charging Capacity at COD: 126.59 MW

Maximum Discharging Capacity at COD: 126.59 MW

Operating Restrictions of Facility: See Exhibit Q

Contract Capacity: See definition in Section 1.1

Maximum Output: 506.36 MWh

Delivery Point: Facility PNode

Facility Meter Locations: See Exhibit R

Metering Arrangement: CAISO Metered Entity

Facility Interconnection Point: The Facility shall interconnect to the Sloan Canyon Switching Station.

Facility PNode: The PNode assigned to the Facility by the CAISO

Participating Transmission Owner: GridLiance West, LLC

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Facility Construction.

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

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

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

(d) [REDACTED]

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

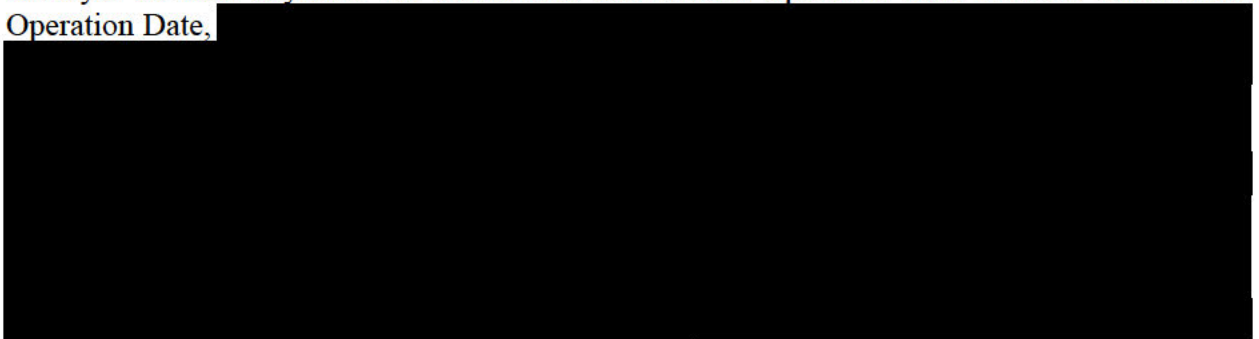
(a) Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

(b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be promptly refunded to Seller.


(c)



(d) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date,

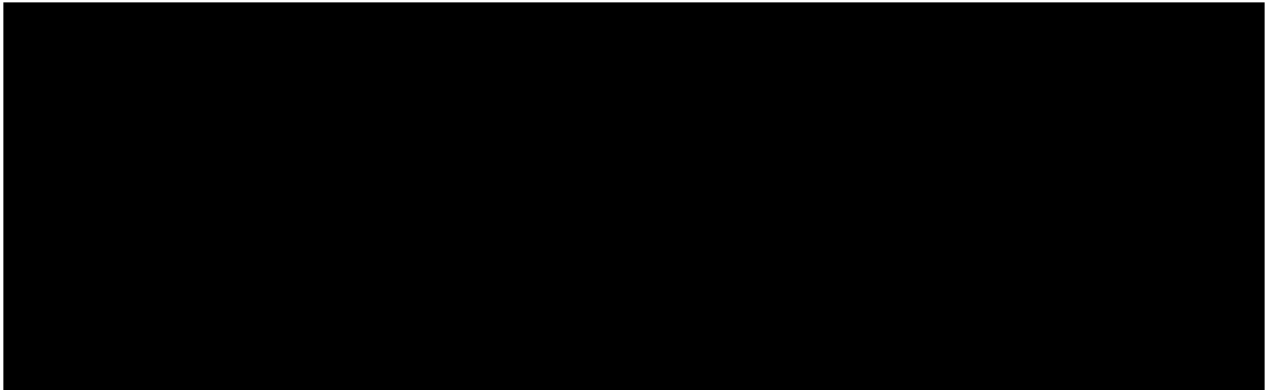


(x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Sections 11.1(b)(i) and 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** Except to the extent due to Buyer Delay, Seller's failure to achieve COD within  of the Guaranteed COD (the "**Outside Guaranteed COD**") for any reason, including Force Majeure Event, shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate this Agreement, and retain a Damage Payment.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall each, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) due to the following (each an “**Extension Event**”):

(a) A Force Majeure Event;



(e) Buyer Event of Default or failure by Buyer or the SC to make all necessary arrangements to receive the Product at the Delivery Point by the anticipated Commercial Operation Date (“**Buyer Delay**”).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (excluding Buyer Delay) shall not exceed [REDACTED] on a cumulative basis. If Seller is asserting a claim of Force Majeure Event, Seller shall satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3. [REDACTED]

[REDACTED] If Seller is asserting a claim for any other delay provided for above, Seller shall provide written notice to Buyer within thirty (30) days after Seller becomes aware of an actual delay affecting the Facility, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall promptly provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Contract Capacity.** If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Contract Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to (i) install additional capacity or Network Upgrades, or take any other steps that are not inconsistent with Seller’s obligations under this Agreement, such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Contract Capacity, and (ii) provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Contract Capacity by such date, Seller shall pay “**Capacity**

Damages” to Buyer, in an amount equal to

EXHIBIT C
COMPENSATION

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

- (a) Contract Price. All Product shall be paid on a monthly basis at the Contract Price

[REDACTED]

- (b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If for any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by

[REDACTED]

- (c) Tax Benefits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Benefits, or if any Tax Benefits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Benefits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Benefits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the Facility is eligible for, or receives Tax Benefits during the Contract Term.

- (d)

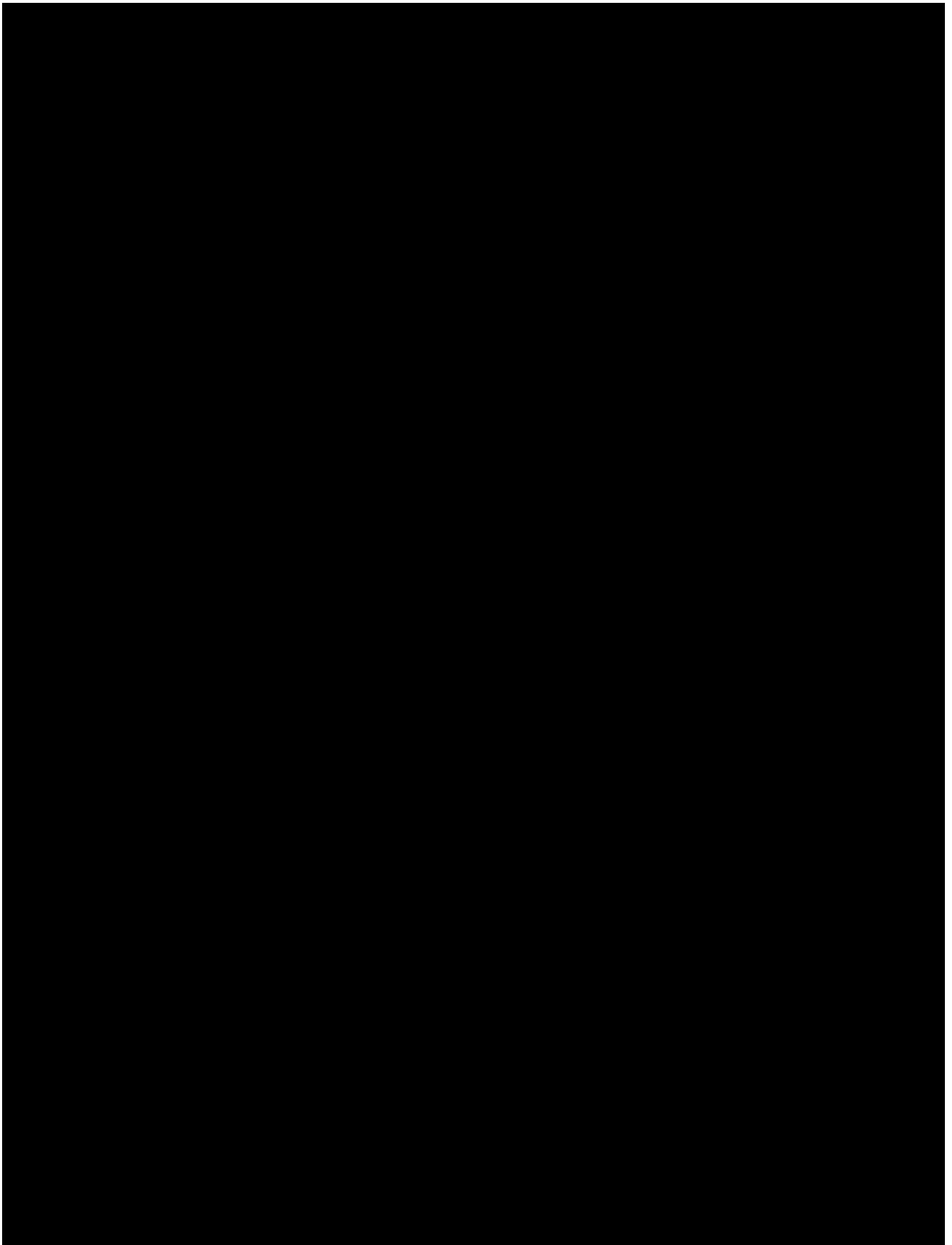
[REDACTED]

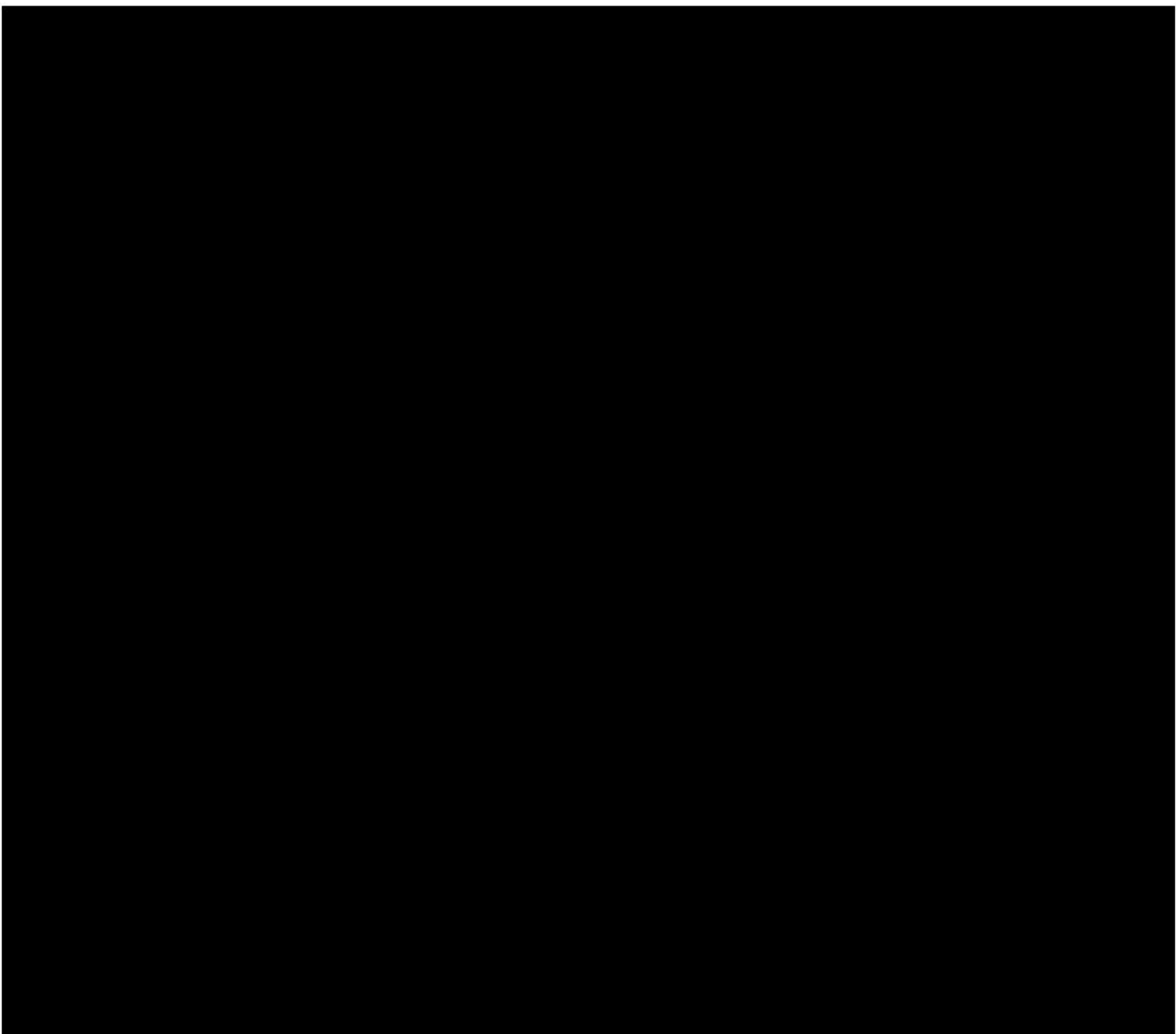
- (e)

[REDACTED]

[REDACTED]


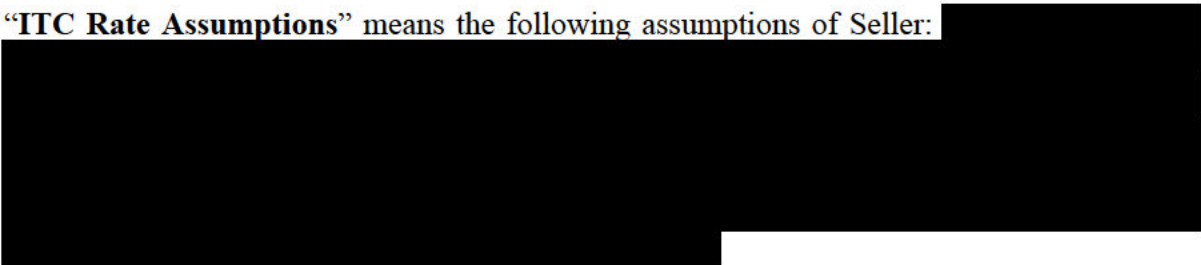
[REDACTED]





“ITC Rate” means the actual investment tax credit rate applicable to the Facility under Section 48E of the Code when the Facility is placed in service for purposes of the Code, taking into account any Change in Tax Law.

“ITC Rate Assumptions” means the following assumptions of Seller:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Charging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer or upon termination of this Agreement. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement (including the Operating Restrictions) and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller prior to the Commercial Operation Date in accordance with Section 2(c) of Exhibit B.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and, if applicable, CAISO, all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Section 4.4(c) and Section 4.9 of this Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be financially responsible for such services and shall pay for CAISO costs (including for Charging Energy, penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with Discharging Energy, CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all CAISO costs, penalties, Imbalance Energy costs, and other charges and sanctions (i) incurred by Buyer because of Seller's failure to perform its obligations under this Agreement, (ii) incurred by Buyer because of any Facility outages for which notice has not been provided as required hereunder, or (iii) to the extent arising as a result of Seller's failure to comply with a valid Charging Notice or valid Discharging Notice that

complies with the requirements of this Agreement, if such failure results in incremental costs to Buyer (in each case, except to the extent such CAISO costs, charges or sanctions arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement). Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account, and any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account (except to the extent such Non-Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or energy storage facility operation, and any such sanctions or penalties are imposed upon the Facility or upon Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, including Curtailment Orders, Charging Notices and Discharging Notices that complies with the requirements of this Agreement, or to otherwise perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility (in each case, except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility unless such failure is caused by Seller's failure to perform its obligations under this Agreement).

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator unless such failure is caused by Seller's failure to perform its obligations under this Agreement.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30)

days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) CAISO Master File and Resource Data Template; CPUC Master Resource Database. 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 the Facility's 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 promptly notify Buyer of any changes.

(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. Summary of activities during the previous calendar quarter or month, as applicable..
6. Forecast of activities scheduled for the current calendar quarter or month as applicable.
7. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones. If Seller has missed any Milestones, a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
8. Progress of all major agreements, permits, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance, including availability projections for the next twelve (12) months.
11. The utilization of union labor by Seller's principal EPC contractor (if applicable).
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY FORECAST

Storage Capacity, MW Per Hour – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

EXHIBIT G
MATERIAL PERMITS

Permits & Third-Party Approvals	Agencies	Estimated Date of Completion

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Roccasecca BESS LLC (“**Seller**”) and Buyer (“**Agreement**”). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, and interconnected and synchronized with the Transmission System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than [REDACTED] of the Contract Capacity.
3. Seller has commissioned all Facility equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO, including through ADS.
5. The Facility is fully capable of charging, storing and discharging energy up to no less than [REDACTED] of the Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization for Initial Synchronization of the Facility has been obtained from the Participating Transmission Owner.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff, as applicable.
8. Seller has caused the Facility to be included in the Full Network Model (as defined in the CAISO Tariff) and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Roccasecca BESS LLC ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of ___ MW_{AC} to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Roccasecca BESS LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on _____ (the “Construction Start Date”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US\$[XXXXXXXXXX]
Expiration Date: _____

Beneficiary:
Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: VP of Finance

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Energy Storage Service Agreement dated as of _____ as amended from time to time between Applicant and Beneficiary (the “Agreement”). This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, including via U.S. registered mail or overnight courier, (b) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [*bank fax number*]. If presented by facsimile or email, such submission must be followed by a phone call to us at [*bank phone number*] to confirm receipt.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, will be duly honored upon presentation to the Issuer on or before

the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer within three (3) business days following receipt of the Drawing Certificate 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. Each drawing paid shall permanently reduce the available amount of this Letter of Credit by the amount paid. Notwithstanding anything else contained herein, in no event will the total of the amounts payable under this Letter of Credit exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100).

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on such Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing delivered (a) via email to Finance@mcecleanenergy.org and (b) followed up by certified letter, overnight courier, or delivered in person to: Attn: VP of Finance, Marin Clean Energy, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Service Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion has occurred provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit in such amount.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Marin Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Marin Clean Energy by wire transfer in immediately available funds to the following account: [*Specify account information*]

Marin Clean Energy

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [Entity name, state of formation, type of entity] (“Guarantor”), and Marin Clean Energy (together with its successors and permitted assigns, “Buyer”).

Recitals

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

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESSA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESSA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the ESSA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the ESSA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESSA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the ESSA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the ESSA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESSA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the ESSA, or

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

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 ESSA, but that are expressly waived under any provision of this Guaranty).

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

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

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

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court,

governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

[]

Attn: []

Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Francisco, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the ESSA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. Buyer may not assign this Guaranty except in connection with an assignment permitted under Section 14.1 of the Agreement. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance

with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Roccasecca BESS LLC (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated [Date] by and between Seller and Buyer (“**Agreement**”). All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.3(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit 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.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N**NOTICES**

Roccasecca BESS LLC	Marin Clean Energy
All Notices: Roccasecca BESS LLC c/o [REDACTED] Street: [REDACTED] City: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	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: N/A Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6684 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Confirmations: Attn: Power Resources Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Payments: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6010 Email: Settlements@mcecleanenergy.org
Wire Transfer: [REDACTED] [REDACTED] [REDACTED]	Wire Transfer: [REDACTED] [REDACTED] [REDACTED]
Credit and Collections: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Credit and Collections: Attn: Finance Phone: (415) 464-6667 Email: finance@mcecleanenergy.org

Roccasecca BESS LLC	Marin Clean Energy
With additional Notices of an Event of Default to: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED] With a copy to: Attn: Legal Email: [REDACTED]	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: Vidhi Chawla, VP of Power Resources Phone: (925) 378-6731 Email: vchawla@mcecleanenergy.org

EXHIBIT O


STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than five (5) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Contract Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. No more than twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test upon no less than ten (10) Business Days prior written Notice to Seller. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than ten (10) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon ten (10) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and timestamped data from the site historian verifying the operating conditions and output of the Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual Efficiency Rate and storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Contract Capacity set forth on the Cover Sheet, as such original Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.



Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the provisions of this Exhibit O, and, to the extent not inconsistent with the foregoing, the operating protocols recommended, required or established by the manufacturer of the Facility. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its

representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost). For the avoidance of doubt, a Storage Capacity Test cannot be performed while the Facility is experiencing an outage.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Contract Capacity;
- (2) Determine the amount of energy required to fully charge the Facility;
- (3) Determine the Facility charge ramp rate;
- (4) Determine the Facility discharge ramp rate;
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of charging energy at a sustained rate of the Maximum Charging Capacity exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is required to charge the Facility from the Minimum State of Charge up to the Maximum State of Charge at a Stored Energy Level not to exceed the Storage Contract Output on the Cover Sheet (MWh) ("Energy In");
- The measurement of discharging energy at a sustained rate of the Maximum Discharging Capacity exclusive of Station Use and Electrical Losses, as measured by the Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point starting from the Maximum State of Charge until the Stored Energy Level reaches zero MWh as indicated by the Facility's energy management system ("Energy Out");
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Facility Meter (MW);
- Amount of time between the Facility's electrical output going from zero percent (0%) to ninety-five percent (95%) of Maximum Discharging Capacity; and
- Amount of time between the Facility's electrical input going from zero percent (0%) to ninety-five percent (95%) of Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Facility, at ten (10) minute intervals:

- (1) time (minutes);
 - (2) charging energy (MWh);
 - (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
 - (5) Ambient air temperature in Celsius.
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg); and
 - (3) Ambient air temperature (°F).
- E. Test Conditions.
- (i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
 - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;

- (3) the level of Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Contract Capacity. The total amount of Energy Out (as reported in Part II.B above) up to, but not in excess of, the product of (i) the original Contract Capacity set forth on the Cover Sheet, as such original Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours, shall be divided by four (4) hours to determine the Contract Capacity, which shall be expressed in MW_{AC}, and shall be the new Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.
- J. Adjustment to Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above) and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Control System Functionality: The Facility control system shall be successfully configured to receive data from the battery system, exchange distributed network protocol 3 data with the Buyer SCADA device, and transfer data to the site data historian for the calculation, recording and archiving of data points.
- Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer's RTU and Seller's control system interface and the ability to record SCADA data.
- Commissioning Checklist: Commissioning checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- The following Commercial Operation tests will be repeated annually:
 - PMAX Capacity Test
 - Round-Trip Efficiency and Energy Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the Facility's maximum operating level (MW), up to the Contract Capacity, for up to five (5) minutes ("Qualified Power Capacity").
2. Procedure:
 - (i) System starting state: The Facility will be in the on-line state with each battery subsystem at or above 25% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
 - (ii) Record the Facility active power level at the Facility Meter.
 - (iii) Command the Facility to follow a signal equal to the Facility's maximum operating level for five (5) minutes, excluding ramping time.
 - (iv) Record and store the Facility active power response. Measurements will be made at the point of interconnection (POI) and by the control

system with a recording in the Facility historian.

- (v) System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The Facility active power response and the commanded level shall be within $\pm 2\%$ as measured by the sum of values at the POI. The time to full output shall be 4 seconds or less. The hold period of such active power value shall be five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

C Round-Trip Efficiency and Energy Test

1. The following test demonstrates the updated Efficiency Rate and amount of energy required to fully discharge the Facility (Energy Out).
 - i. The Efficiency Rate is calculated by dividing the Energy Out (as reported in Part II.B above) by the Energy In (as reported in Part II.B above).
2. Procedure:
 - i. System Starting State: The Facility will be in the on-line state at the Minimum State of Charge.
 - ii. Record the initial value of the SOC.
 - iii. Command a real power charge that results in an AC power at the Facility's Maximum Charging Capacity and continue charging until the earlier of (a) the Facility has reached the Maximum State of Charge or (b) six (6) hours have elapsed since the Facility commenced charging.
 - iv. Record and store the SOC after the earlier of (a) the Facility has reached Maximum State of Charge or (b) six (6) hours of continuous charging.
 - v. Record and store the amount of charging energy, measured at the Facility Meter, to go from Minimum State of Charge to Maximum

State of Charge. Such data point shall be used for purposes of calculating Energy In.

- vi. Following a manufacturer recommended rest period, command a real power discharge that results in an AC power output at the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has reached Minimum State of Charge, or (b) four (4) consecutive hours, excluding ramping time. The Parties acknowledge that the duration of the discharge at the Maximum Discharging Capacity may be less than four (4) hours due to degradation.
- vii. Record and store the SOC.
- viii. Record and store the discharging energy as measured at the Facility Meter. Such data point shall be used for purposes of calculating Energy Out.
- ix. If the Facility has not reached Minimum State of Charge, continue discharging the Facility until it reaches Minimum State of Charge.

Pass/Fail Criteria		
The measured Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate. The Energy Out at the Commercial Operation Date Storage Capacity Test is greater than or equal to the Storage Contract Output, but may be lower than the Storage Contract Output in subsequent Storage Capacity Tests		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

EXHIBIT P

STORAGE FACILITY AVAILABILITY

Monthly Storage Availability

Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{\text{MNTHHRS}_m}$$

where:

m = relevant month “ m ” in which availability is calculated;

MNTHHRS_m is the total number of On-Peak Hours for the month;

UNAVAILHRS_m , is the total number of On-Peak Hours in the month during which the Facility was unavailable to deliver Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Curtailment Orders, CAISO Operational Orders, Buyer Default, Buyer Delay, Storage Capacity Tests, System Emergencies, [REDACTED]

[REDACTED] or Buyer’s operation in violation of the Operating Restrictions in Exhibit Q; To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the UNAVAILHRS_m for such hour or partial hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [REDACTED] then:

[REDACTED]

- (iii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability and is less than [REDACTED] then:

[REDACTED]

- (iv) If the Monthly Storage Availability is less than [REDACTED] then:

[REDACTED]

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, Operating Restrictions and communications protocols.

Maximum Stored Energy Level:	506.36 MWh at COD
Minimum Stored Energy Level:	0 MWh
Maximum Charging Capacity:	126.59 MW
Minimum Charging Capacity:	0 MW
Maximum Discharging Capacity:	126.59 MW
Minimum Discharging Capacity:	0 MW
Annual Average State of Charge (SOC):	<p>████ If the year-to-date average SOC is █████ at any time during the second half of a Contract Year, then the Parties shall confer and determine a mutually agreeable cure plan to achieve an annual average SOC of █████ for such Contract Year █████</p> <p>████ If Parties cannot reach a mutually agreeable cure plan within a three (3) week period following initiation of discussions, then Seller may provide Buyer upon seventy-two (72) hours advance notice that the maximum allowed SOC apart from charging and discharging periods shall be limited until the year-to-date average SOC is █████ at which point in time the limitation shall be released.</p>
Maximum State of Charge (SOC):	100%
Minimum State of Charge (SOC):	0%
Ramp Rate Range:	████ of Contract Capacity in < █████ ms pending approval from CAISO and PTO during NRI Process
Annual Cycles:	365 per Contract Year
Daily Dispatch Limits:	Charging: █████ times per day Discharging: █████ times per day

Maximum Time at Minimum Stored Energy Level:	No limit on Maximum Time at Minimum Stored Energy Level when grid power is available to the Facility
Grid Charging of Facility:	Yes
Other Operating Limits:	Seller is obligated to provide voltage support under the Interconnection Agreement.
Temperature Derates:	Maximum Charging Capacity and Maximum Discharging Capacity set forth above are based on operating temperature range of ■■■C to ■■■C (■■■F to ■■■F). The Facility cannot operate outside of the operating temperature range.

EXHIBIT R
METERING DIAGRAM

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT T

DIVERSITY REPORTING



MCE Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

amcgee@mcecleanenergy.org [Switch account](#)



* Required

Email *

Your email

Business Name *

Your answer

Where is your business located/headquartered?

Your answer




Is your business certified under General Order 156 (GO 156)?

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned, disabled-owned, and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com

- ☐ Yes
- ☐ No
- ☐ Qualified as a WMDVLGBTBE but not GO 156 Certified

If certified, when does your certification expire?

Date

mm/dd/yyyy 

If you answered "yes" or "qualified but not certified", under which categories?
Please choose all that apply.

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

- ☐ Minority Owned
- ☐ Woman owned
- ☐ LGBT owned
- ☐ Disabled Veteran Owned
- ☐ Disabled Owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)



If a minority-owned business enterprise, certified or qualified as which of the following?

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: https://www.mcec cleanenergy.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

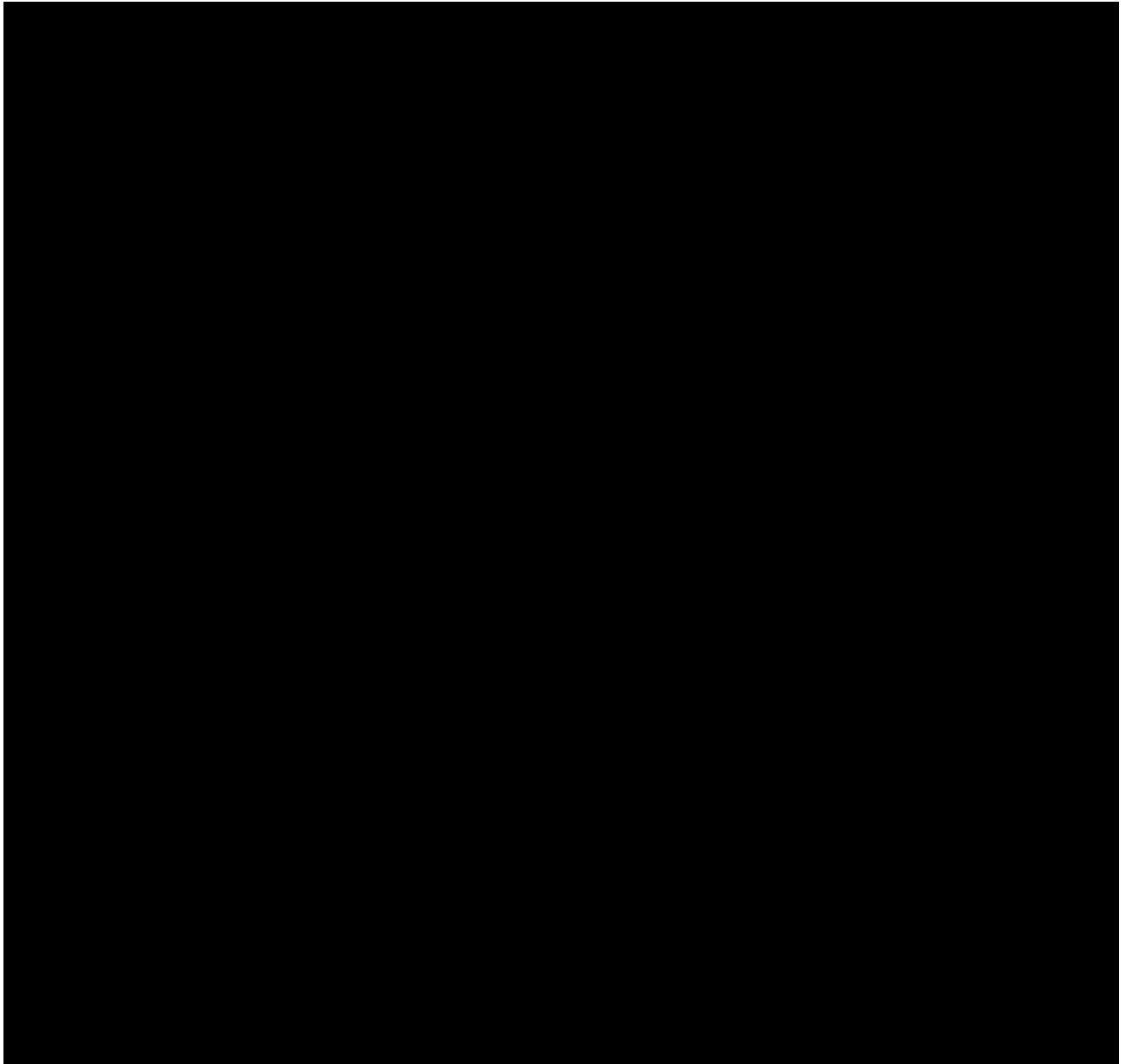
Clear form



Never submit passwords through Google Forms.



EXHIBIT U





October 3, 2025

TO: MCE Technical Committee

FROM: Paul Krebs, Senior Power Procurement Manager

RE: Renewable Power Purchase Agreement with Buena Vista Energy, LLC
(Agenda Item #07)

ATTACHMENTS: A. Buena Vista Energy, LLC Presentation
B. Renewable Power Purchase Agreement between MCE and Buena Vista Energy, LLC (Redacted)

Dear Technical Committee Members:

Summary:

MCE staff received a bilateral offer from Buena Vista Energy, LLC in the spring of this year for a 38 MW wind facility ("Buena Vista") in Contra Costa County, CA.

The project is fully operational and will be refurbished prior to the start of the delivery term with MCE to ensure reliable operations and deliveries through the delivery term with MCE.

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 Buena Vista over an 8-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.

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 sufficient energy to meet the annual electric needs of approximately 15,000 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. Buena Vista's parent company, Leeward, operates a diverse portfolio of wind, solar, and energy storage totaling over 3 GW in the United States.

Facility / Contract Overview

- Facility Name: Buena Vista Wind Project
- Facility Size/Type: 38 MW wind generation facility
- Products under Contract: PCC1 Renewable Energy, RA, Ancillary Services
- Price: Fixed with no escalation over the delivery term
- Project location: Contra Costa County, California
- Guaranteed Commercial Operation Date: January 2028
- Contract Term: 8 contract years
- Credit: No credit or collateral obligations for MCE
- Union labor: Union contractors would be employed for all on-site construction trades
- Community Benefits 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 Fiscal Year 2028/29.

Recommendation:

Authorize execution of the Renewable Power Purchase Agreement with Buena Vista Energy, LLC.



Renewable Power Purchase Agreement with Buena Vista Energy, LLC

MCE Technical Committee
October 3, 2025



Overview of Today's Presentation

- Buena Vista Wind Project Overview
- Renewable Power Purchase Agreement Overview
- Recommendation
- Q & A

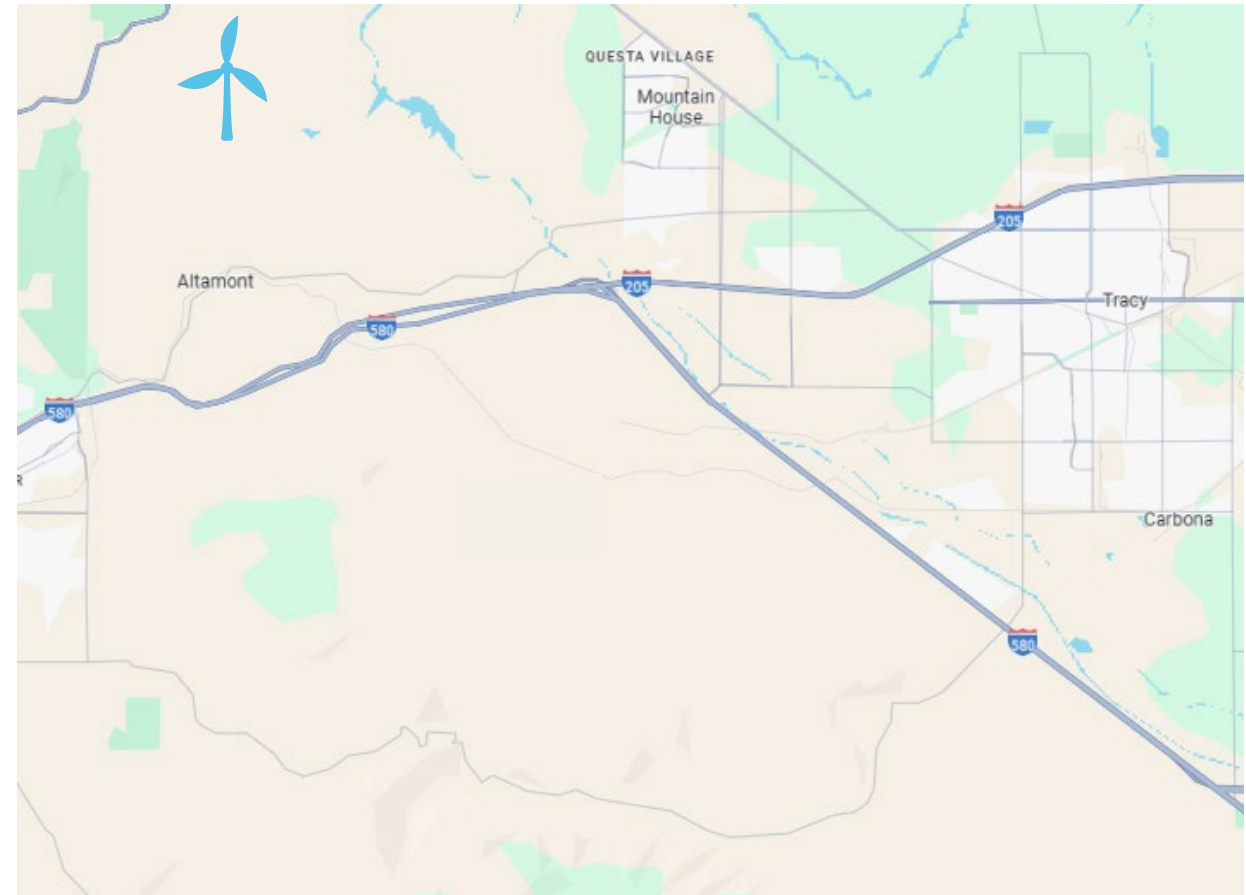
Buena Vista Project Overview

- Technology: Wind generation facility
- Location: Altamont Pass – Contra Costa County, CA
- Capacity: 38 MW
- Owner/Operator: Leeward Renewable Energy, LLC
- Status: Operational (refurbishment prior to start of delivery term)

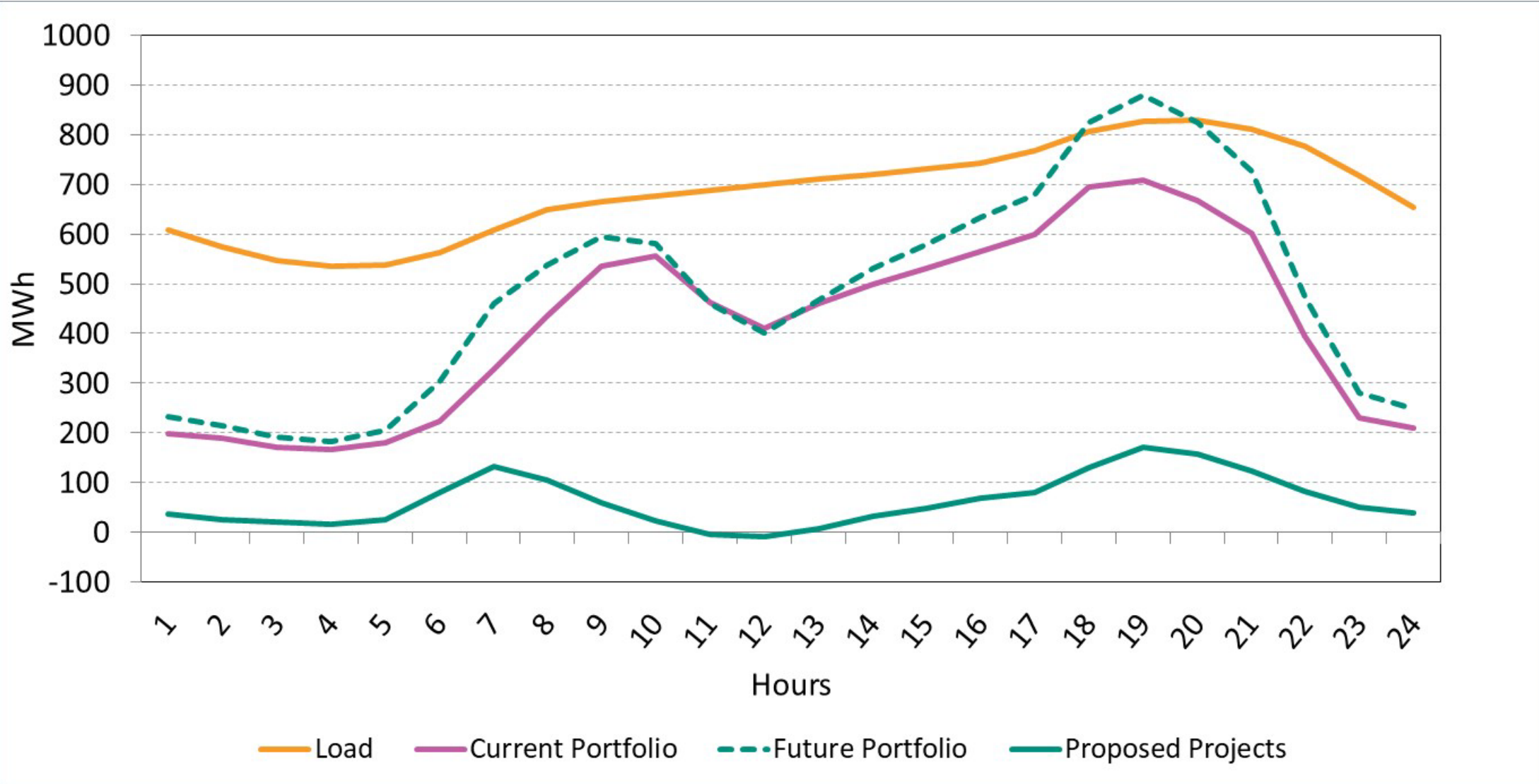


Renewable Power Purchase Agreement Overview

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



MCE Load-Supply Balance



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
Buena Vista 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.



Thank you!



mceCleanEnergy.org
info@mceCleanEnergy.org

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Buena Vista Energy, LLC, a Delaware limited liability company (“**Seller**”)

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

Description of Facility: A 38 MW renewable wind energy electricity generating facility, located in Contra Costa County, in the State of California, as further described in Exhibit A.

Expected Delivery Start Date: January 1, 2028

Delivery Term: The period for Product delivery will be for eight (8) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	

Contract Capacity: 38 MW

Contract Price:

Contract Year	Contract Price
1 – 8	

Product:

- ☒ Facility Energy
- ☒ Green 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’s designee

Development Security and Performance Security:

Development Security: [REDACTED]
Performance Security: [REDACTED]

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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:

“**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 Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

“**Ancillary Services**” means all ancillary services (as defined in the CAISO Tariff), 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 ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

“Buyer” means Marin Clean Energy, a California joint powers authority.

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

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted 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 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 due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, (ii) a reduction of Facility Energy due to Buyer’s participation in the Ancillary Services market, or (iii) a reduction of Facility Energy due to Buyer’s breach or default under the PPA.

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

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

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

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

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (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 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.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller 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.

“**Compliance Actions**” has the meaning set forth in Section 3.11(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.11(a).

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

“**Contract Capacity**” means the amount of generating capacity of the Facility.

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

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

“**Contract Year**” means a period of twelve (12) consecutive months, beginning on the Delivery Start Date, except for the eighth (8th) Contract Year. The first Contract Year shall commence on the Delivery Start Date and the eighth (8th) Contract Year shall commence on the anniversary of the Delivery Start Date and end at the end of HE 2400 on April 28, 2035.

“**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 Order**” means any of the following:

(a) a curtailment ordered by CAISO (other than any curtailment arising from or in connection with a Buyer Bid Curtailment), including through the ADS or a CAISO Operating Order, for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated

System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

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

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

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

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

"Damage Payment" means the dollar amount that equals the amount of the Development Security, [REDACTED]

"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 last CAISO VER forecast for each Settlement Interval in such period, or if unavailable, to be calculated by an industry-standard methodology reasonably agreed to by Buyer and Seller that uses meteorological conditions on the Site as inputs for the period of time during such during the 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).

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

“Delivery Start Date Delay Damages” or **“DSD Delay Damages”** means an amount equal to [REDACTED]

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Delivery Start 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 Delivery Start Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve the Delivery Start Date.

“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.

“Facility” means the separately metered 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 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 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.

“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 generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any

voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. 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 the CPUC, 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) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

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

“Guaranteed Delivery Start Date” means the Expected Delivery Start Date, as such date may be extended pursuant to Exhibit B.

“Guaranteed Energy Production” means an amount of Adjusted Energy Production, 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.

“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] [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.

“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 Contract Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

“ITC” means the investment tax credit established pursuant to Section 48 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]

[REDACTED] in a form substantially similar to the letter of credit set forth in Exhibit K, or as otherwise reasonably acceptable to Buyer.

“Licensed Professional Engineer” means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless

otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

“Limited Assignee” has the meaning set forth in Section 14.4.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

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

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

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

“Lost Output” has the meaning set forth in Exhibit G.

“Major Subcontractors” means any first-tier subcontractor of Seller that contracts directly with 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.

“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 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 two (2) consecutive Contract Year period during the Delivery Term, all calculated on a rolling basis (e.g., Contract Years 1-2, 2-3, 3-4, etc.).

“**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]

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

“Production Tax Credits” or **“PTCs”** means the production tax credit under Section 45 or Section 45Y 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.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to [REDACTED]

[REDACTED]

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

“Qualified Transferee” 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 of [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 and operates at least 250 MW of renewable energy generation facilities or has retained a third party with such experience to operate the Facility, and (d) such Person (together with its affiliates) are not listed on any sanctions list published by a Governmental Authority with

jurisdiction over the Parties or domiciled in a country which is at that time subject to sanctions imposed by a Governmental Authority with jurisdiction over the Parties (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 Delivery Start Date.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

“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.

“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).

“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 that are, (i) 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 and subject to Section 3.5, Flexible Resource Adequacy Benefits associated with the Facility; (ii) from a thermal resource, or (iii) from an alternate resource reasonably acceptable to Buyer.

“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 (if any, subject to Section 3.5) and Local Capacity Area Resource Adequacy Benefits (if any) 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 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 generated 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.

“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 Leeward Renewable Energy, LLC.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent to Delivery Term.** The Delivery Term shall not commence until each of the following requirements have been met to Buyer's reasonable satisfaction, or waived in Buyer's sole discretion:

(a) Seller has delivered to Buyer a certificate substantially in the form of Exhibit H from an officer of Seller with knowledge of such facts certifying that such statements are true and accurate as of the Delivery Start Date;

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


(c) An Interconnection Agreement between Seller or an Affiliate of Seller, the CAISO, and the PTO is in full force and effect and a copy of the Interconnection Agreement has been delivered to Buyer;

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

(e) Seller has satisfied its workforce and community benefit requirements set forth in Section 13.4;

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

(g) Seller has paid Buyer all amounts owing under this Agreement, if any, including DSD Delay Damages.



2.4 **Development; Construction; Progress Reports.** Starting after the first full calendar quarter after the Effective Date, within fifteen (15) days after the close of (i) each calendar quarter prior to start of construction, and (ii) each calendar month, thereafter until completion of the repowering of the Facility, Seller shall provide to Buyer a Progress Report and participate in telephonic or video-conferenced meetings between representatives of Buyer and Seller (to be scheduled on the same cadence as delivery of the Progress Reports) to review such reports and discuss Seller's progress towards repowering the Facility. The form of the Progress Report is set forth in Exhibit E. Seller shall provide Buyer Notice of the commencement of construction within ten (10) Business Days after construction commences. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to progress and completion of Facility repowering within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, (x) Seller is solely responsible for all aspects of the repowering of the Facility, including obtaining all permits and approvals to repower the Facility, and the design, selection and procurement of the equipment comprising the repowered Facility; and (y) subject to satisfying the obligation pursuant to Section 2.2(a) and Exhibit H of completing repowering activities associated with wind turbines representing [REDACTED] of the Contract Capacity, the completion of the Facility repowering shall not be a condition precedent to the commencement of the Delivery Term. Seller shall not engage in any repowering of the Facility during the Delivery Term without Buyer's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility, and Buyer will purchase and receive such Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C. At its sole discretion, Buyer may during the Delivery Term re-sell to third parties all or a portion of the Product, after title and risk of loss thereto has been transferred to Buyer, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component

thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product 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, all 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.** 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 Facility Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, (i) environmental attributes sold under this Agreement are restricted to Green Attributes, and (ii) Resource Adequacy Benefits available from the Facility exclude Flexible Resource Adequacy Benefits; however, through Laws enacted after the Effective Date, Future Environmental Attributes may be created by a Governmental Authority and/or the Facility may become eligible to provide Flexible Resource Adequacy Benefits. Subject to the final sentence of this Section 3.5(a) and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes and/or Flexible Resource Adequacy Benefits, as applicable, 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 and/or Flexible Resource Adequacy Benefits, as applicable, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes and/or Flexible Resource Adequacy Benefits, as applicable. Seller shall have no obligation to bear any costs, losses, or liabilities, or alter the Facility or the operation of the Facility, or 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, if any, associated with such alteration or changes in operation.

(b) If Buyer elects to receive Future Environmental Attributes and/or Flexible Resource Adequacy Benefits, as applicable 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 and/or Flexible Resource Adequacy Benefits, as applicable, 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 (in any event subject to Section 3.11); *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-Delivery Term Product.** Prior to the Delivery Start Date, Buyer will have no right to the Product from the Facility, and Seller may sell all or any portion of the Product to one or more third parties and retain all associated revenues.

3.7 **Capacity Attributes.** From and after the Delivery Start Date, 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.

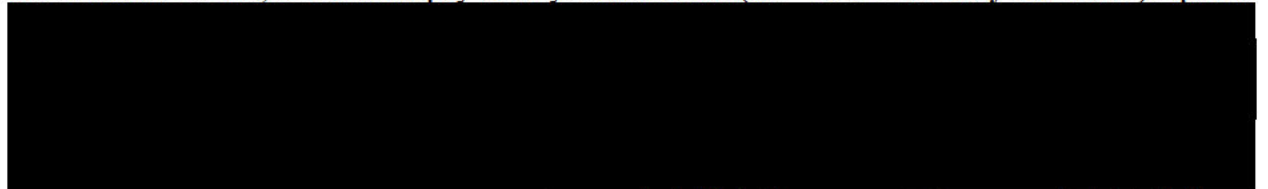
(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource 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 executing all documents or instruments reasonably 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 and exclusive 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

 *provided*, if Seller pays to Buyer an RA Deficiency Amount in respect of any month in connection with an RA Shortfall Amount on Buyer’s annual

Resource Adequacy Plan, Seller shall in no event be liable for payment of any additional RA Deficiency Amount in respect of such RA Shortfall Amount in connection with Buyer's monthly Resource Adequacy Plan. 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 for such month. "**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 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). Subject to Section 3.11, Seller shall maintain throughout the remainder of the Delivery Term the 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) Notwithstanding anything else in this Agreement, subject to this Section 3.11, Seller agrees to use commercially reasonable efforts to: (i) cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (A) 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 other applicable Law; (B) require submission of any reports, data, or other information required by Governmental Authorities; (C) provide additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; or (D) satisfy new applicable compliance requirements of Governmental Authorities; or (ii) take any other actions that may be reasonably requested by Buyer as a result of such change in Law to ensure Buyer’s compliance with applicable Law; or (iii) take any other actions that may be required of Seller as a result of such change in Law to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of the Product (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 take all such Compliance Actions shall be capped at

(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, and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.12 **Cooperation with Buyer Regarding Buyer’s Compliance Obligations.** Seller shall, upon reasonable request of Buyer, provide additional information and documentation reasonably available to Seller to Buyer to assist Buyer in meeting its compliance with regulatory agency requests and requirements that the Facility meets existing or, subject to Section 3.11, any future compliance program administered by any Governmental Authority to which Buyer is accountable; *provided*, Seller may redact confidential and/or market sensitive information as required to comply with its obligations to third parties, unless Seller or Buyer is required to disclose such information to the requesting Governmental Authority under applicable Law. Seller hereby authorizes Buyer to submit the information and documentation provided pursuant to the preceding sentence and similar documentation to any requesting Governmental Authority 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 applicable 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 applicable regulatory agency’s rules, orders, decisions on confidential or protected information, including pricing and other information that is commercially sensitive, confidential or proprietary.

ARTICLE 4

OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Delivery Start Date through the end of the Contract Term, Seller shall supply and deliver all Product to Buyer at the Delivery Point, and Buyer shall take delivery of all 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 Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to 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 the requirements of 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 Delivery Start Date, 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 non-binding 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, if no Real-Time Forecast is provided, then 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 Seller shall provide to Buyer or Buyer’s Scheduling Coordinator 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 CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable 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 reasonably 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 all Deemed Delivered Energy associated with a Buyer Curtailment Period in accordance with Exhibit C.

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

(d) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility in accordance with this Agreement or a

Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices 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 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. The Parties shall plan outages of the Facility to mutually accommodate the reasonable requirements of Seller and Buyer. Unless otherwise agreed in writing, Seller shall not schedule non-emergency maintenance during the period of June 1st to September 30th that reduces the Available Generating Capacity 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 through September 30th, (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 Curtailment Period pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

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

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

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. 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; [REDACTED]

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 Delivery Start 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 foregoing damages shall not apply and 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, except to the extent Station Use is netted from Facility Energy when the Facility is generating.

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 Contract 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, in its capacity as Scheduling Coordinator, to schedule the Facility in accordance with the CAISO Tariff and be fully reflected in the CAISO’s market optimization and not result in CAISO market awards that are not physically feasible (collectively, the “**Dedicated Interconnection Capacity**”). 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 due to any third-party use of the Dedicated Interconnection Capacity.

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 Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date or promptly upon request by Seller to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Code.

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such

damage or injury. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of 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. 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, 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 use reasonable efforts to deliver an invoice to Buyer for Product no later than ten (10) days after the end of each month of the Delivery Term. 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 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 from the invoice date, with disputed payments subject to Section 8.5. 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 and G, 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 after the Effective Date. Seller shall maintain the Development Security in full force and effect at all times until Buyer is required to return the Development Security hereunder, provided that Seller shall have no obligation to replenish the Development Security following a draw. 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 Delivery Start Date. Within five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the initial amount. 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.

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 Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell 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; and (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to 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 Delivery Start 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.** Within two (2) Business Days of commencement of a Force Majeure Event, the non-performing party shall provide the other party with oral notice of the event of Force Majeure, 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 Force Majeure claim. Failure to provide timely written notice as described in the preceding sentence constitutes a waiver of a 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.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Delivery Start Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An “**Event of Default**” shall mean,

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) the failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv) or Section 11.1(b)(v), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G, and (3) any deficit or shortfall in delivery of WREGIS Certificates, the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) the failure to commence the Delivery Start Date [REDACTED]

(iii) If Seller abandons all operation, maintenance, and repair activities of the Facility for a continuous period of [REDACTED] during which Seller has ceased all material operational activities without a valid Force Majeure Event or other justifiable cause approved by Buyer, such approval not to be unreasonably withheld;

(iv) 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;

(v) if, beginning in the second Contract Year, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is less than [REDACTED] of the Expected Energy amount in each Contract Year;

(vi) 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;

(vii) 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

(viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least [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 Delivery Start 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;

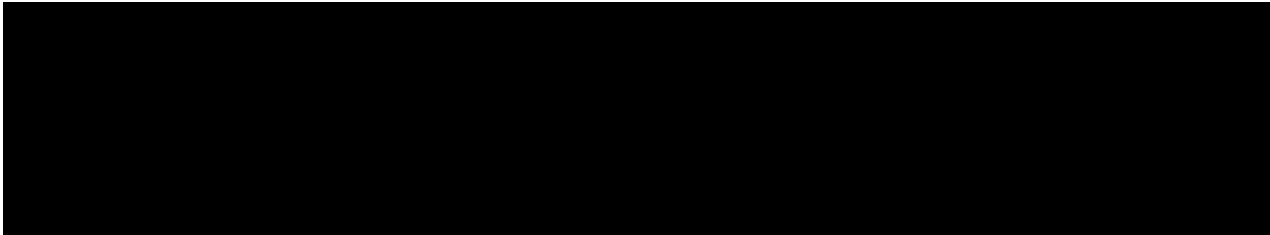
provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

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. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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



ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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, AND EXHIBIT G 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 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.

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

13.5 **Diversity Reporting**. Seller agrees to, or use commercially reasonable efforts to cause its Major Subcontractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit P, or a similar questionnaire, at the reasonable request of Buyer and to use commercially reasonable efforts to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld 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, 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. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(a) Buyer shall give notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of

Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

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

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

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

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

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

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

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

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

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

(f) If this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the transfer date

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within ninety (90) days after Buyer receives notice of such rejection or termination, 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 Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld;

(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.**

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, a Credit Rating of [REDACTED] of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller; *provided*, Seller will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Seller's rights, benefits, risks or obligations under this Agreement, except as expressly set forth in this Section 14.4. 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 R, or as otherwise reasonably acceptable to the Parties. 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. Buyer shall pay Seller's reasonable, documented out-of-pocket expenses, including reasonable attorneys' fees, incurred to provide all consents and other required documentation in connection with any Buyer assignment of this Agreement.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States 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 authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, the Parties shall submit the dispute to meditation prior to seeking any and all remedies available 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). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. 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 prior to the Delivery Start 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 or Sudden & Accidental Insurance.** Seller shall maintain or cause to be maintained (including as included under the General Liability policy) prior to the Delivery Start Date, Pollution Legal Liability Insurance in the amount of Two Million

Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Contractor Insurance. Seller shall require its primary contractor for the repowering of 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 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.), and that Buyer shall provide Seller with prompt notice of any requests for disclosure of any Seller Confidential Information under the California Public Records Act in accordance with the requirements of this Section 18.2. 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, 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 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 an unredacted version of 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.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

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

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures appear on following page.]

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

**Buena Vista 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: Buena Vista 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: Contra Costa County, California

CEQA Lead Agency: Contra Costa County

Type of Facility: Wind energy electricity generating facility

Contract Capacity: See definition in Section 1.1.

Interconnection Point: The Facility shall interconnect at a line tap to PG&E's Buena Vista-Windmaster 230 kV line, as further described in the Facility's interconnection agreement.

Delivery Point: Facility Pnode on the CAISO Grid (WNDMSTR_2_N001)

PNode:

Participating Transmission Owner: Pacific Gas and Electric Company

Schedule 1

List of APNs

EXHIBIT B

DELIVERY START DATE

1. **Delivery Start Date of the Facility.** “**Delivery Start Date**” 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 an Officer of Seller to Buyer substantially in the form of Exhibit H (the “**Delivery Start Date Certificate**”), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Delivery Start Date, and (iii) Buyer has acknowledged to Seller in writing that Delivery Start Date has been achieved; provided that Buyer will provide a response to Seller’s notice of Delivery Start Date within five (5) Business Days of receipt thereof or will be deemed to have agreed that Delivery Start Date has been achieved. Seller shall provide Notice to Buyer that it intends to achieve the Delivery Start Date at least sixty (60) days before the anticipated Delivery Start Date.
2. The “**Delivery Start Date**” shall be the later of (x) the Expected Delivery Start Date or (y) the date on which the Delivery Start Date occurs. Seller shall use commercially reasonable efforts to cause the Delivery Start Date for the Facility to occur by the Guaranteed Delivery Start Date. If the Delivery Start Date does not commence by the Guaranteed Delivery Start Date, [REDACTED]
3. **Termination for Failure to Achieve Guaranteed Delivery Start Date.** If the Delivery Start Date has not commenced within [REDACTED] after the Guaranteed Delivery Start Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Delivery Start Date.** The Guaranteed Delivery Start Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis for a Force Majeure Event or delays caused by Buyer (the “**Development Cure Period**”). Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period for Force Majeure shall not exceed [REDACTED] extensions granted under the Development Cure Period for delays caused by Buyer shall be unlimited in duration. Notwithstanding the foregoing, no extension under the Development Cure Period for Force Majeure shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a

delay due to Force Majeure or delays caused by Buyer, but in no case more than [REDACTED] [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 Delivery Start Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay. As used in the preceding sentence, "actual delay" does not include Seller's receipt of generic notices of potential delays. Upon request from Buyer, Seller shall promptly provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

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 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 Contract Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be Zero Dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Curtailment Payments. [REDACTED]

(e) Tax Credits. [REDACTED]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Beginning on the Delivery Start Date and through the remainder of the Delivery Term, 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. At least thirty (30) days prior to the Delivery Start 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 Delivery Start 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 Delivery Start Date. On and after the Delivery Start 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 Delivery Start 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. 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, or (ii) outages for which notice has not been provided as required under this Agreement or under the CAISO Tariff, except to the extent any such failure of

Seller is caused by Buyer's failure to perform its duties as Scheduling Coordinator. 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 (except to the extent such Non-Availability Charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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, except to the extent any such failure of Seller is caused by Buyer's failure to perform its duties as Scheduling Coordinator.

(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 (other than any costs or charges arising out of or connected to any failure by Buyer's failure to perform its duties as Scheduling Coordinator).

(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 towards completing Facility repowering.
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 towards completing Facility repowering.
9. List of issues that are likely to potentially affect completing Facility repowering.
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																								
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MAR																								
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MAY																								
JUN																								
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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																														
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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 = The Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = The Adjusted Energy Production amount for the Performance Measurement Period, in MWh

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

[REDACTED]

D = the Contract Price

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

[REDACTED]

[REDACTED]

“**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.

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 DELIVERY START DATE CERTIFICATE

This certification ("**Certification**") of Delivery Start Date is delivered by _____, an officer of Seller, ("**Officer of Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ by and between Buena Vista Energy, LLC, a Delaware limited liability company ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. I am an officer of Buena Vista Energy, LLC, a Delaware limited liability company, and I have knowledge of the facts set forth in this Certification and such facts are true and accurate as of the date above.
2. The Facility has an installed and operating nameplate capacity of no less than _____ of the Contract Capacity.
3. The Facility's most recent performance test demonstrated peak electrical output of no less than _____ of the Contract Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
4. All repowering activities associated with wind turbines representing _____ of the Contract Capacity of the Facility have been completed.
5. The Facility is fully operational and interconnected, fully integrated and synchronized with the Transmission System.
6. The Facility's communication systems and automatic generation control (AGC) interface are fully capable of operating the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
7. The Facility has all required authorizations from the Participating Transmission Owner and CAISO for commercial operation under the Interconnection Agreement.
8. The Facility has obtained CEC Certification and Verification.
9. The Facility has Full Capacity Deliverability Status.
10. The Facility is 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.
11. All applicable permits and government approvals required for the operation of the Facility, including pursuant to any refurbishment of the Facility, have been obtained.

12. The PTC Amount that the Facility is eligible for as of the date above is _____.

EXECUTED by [**Officer of Seller**]

this _____ day of _____, 20____.

[**Officer of Seller**]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I
RESERVED

EXHIBIT J
RESERVED

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiration Date: _____

Beneficiary:
Marin Clean Energy
Attn: VP of Finance
1125 Tamalpais Avenue
San Rafael, CA 94901, USA

To Whom It May Concern:

By the order of [REDACTED] ("Applicant"), we, *The Toronto-Dominion Bank, New York Branch, 1 Vanderbilt Avenue, New York, NY 10017, United States, Attention: TD Securities (Letters of Credit)* ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of Marin Clean Energy, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [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 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 presented by (a) physical delivery, including via U.S. mail or overnight courier, (b) as a PDF attachment to an email sent from an email domain of the Beneficiary to [our email address TDMTLSBL@tdsecurities.com] or (c) facsimile to 514-289-1469 or 1-866-661-6766 to attention of: "Standby Team-Global Trade Finance", with immediate verbal confirmation to us by telephone (Toll free: 1-866-661-6866). Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date.

All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

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.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately prior paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*The Toronto-Dominion Bank, New York Branch, 1 Vanderbilt Avenue, New York, NY 10017, United States, Attention: TD Securities (Letters of Credit)*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at *1-866-661-6866* 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: VP of Finance, 1125 Tamalpais Avenue, San Rafael, CA 94901, USA. 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*]

[*officer name*]

[*officer title*]

Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

To:

The Toronto-Dominion Bank, New York Branch,
1 Vanderbilt Avenue, New York, NY 10017, United States
Attention: TD Securities (Letters of Credit)

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 [The Toronto-Dominion Bank, New York Branch, (the "Bank") by order of [redacted] (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. \$ [redacted] 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. \$ [redacted], 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 Buena Vista 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 Buena Vista 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 _____ by and between Seller and Buyer (“**Agreement**”). All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(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.

BUENA VISTA ENERGY, LLC
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT N**NOTICES**

Buena Vista Energy, LLC	Marin Clean Energy
All Notices: Street: [REDACTED] City: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	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: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6684 Email: settlements@mcecleanenergy.org
Scheduling: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Confirmations: Attn: Power Resources Phone: (415) 464-6010 Email: procurement@mcecleanenergy.org
Payments: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6010 Email: settlements@mcecleanenergy.org
Wire Transfer: [REDACTED] BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: [REDACTED]
Credit and Collections: [REDACTED] Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Credit and Collections: Attn: Finance Phone: (415) 464-6667 Email: finance@mcecleanenergy.org

Buena Vista Energy, LLC	Marin Clean Energy
<p>With additional Notices of an Event of Default to: [REDACTED]</p> <p>Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>	<p>With additional Notices of an Event of Default to: Attn: Legal Phone: (415) 464-6010 Email: contracts@mcecleanenergy.org</p> <p>With a copy to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com</p>
<p>Emergency Contact: [REDACTED]</p> <p>Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>	<p>Emergency Contact: Attn: Vidhi Chawla, VP of Power Resources Phone: (925) 378-6731 Email: vchawla@mcecleanenergy.org</p>

EXHIBIT O
COMMUNITY BENEFIT



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

LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [____], 2025 by and among Buena Vista Energy, LLC, a Delaware limited liability company (“**PPA Seller**”), and Marin Clean Energy, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), 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 used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (collectively, the “**Parties**”, and each individually, a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to J. Aron 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 Assigned Products shall be delivered pursuant to the terms and conditions of the PPA and this Agreement during the Assignment Period, as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay PPA Seller, in accordance with the requirements of the PPA, the Contract Price for all Assigned Products that are actually delivered to J. Aron (including as applicable any Deemed Delivered Energy) 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; (ii) notwithstanding the delegation under this clause (b), PPA Buyer shall remain responsible for payment of any amounts due to PPA Seller that are directly related to Assigned Products (including, without limitation, the Delivered Product Payment Obligation) to the extent not paid by J. Aron or Guarantor (as defined below) and (iii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron and the Guarantor (as defined below) fail to pay the Delivered Product Payment Obligation in cash by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer will pay such unpaid Delivered Product Payment Obligation in cash to PPA Seller, and it will be an Event of Default pursuant to Section 11.1(a)(i) of the PPA if such amount is not paid within ten (10) Business Days of receiving notice of such non-payment from PPA Seller. For the avoidance of doubt, there shall be no deduction from the Contract Price to reflect any Products sold under the PPA that are not Assigned Products.

- (c) PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above and J. Aron hereby accepts such assignment, transfer and conveyance and assumes PPA Buyer's duties and obligations delegated to it in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Products will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Products in accordance with the PPA and this Assignment Agreement; (ii) PPA Buyer is hereby authorized by J. Aron to and shall act as J. Aron's agent with regard to scheduling of Assigned Products; (iii) PPA Buyer will provide copies to J. Aron of any Notice 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) PPA Seller will provide copies to J. Aron of the annual and monthly forecasts delivered pursuant to Sections 4.3(a) and (b) of the PPA; (v) PPA Seller will provide copies to J. Aron 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 or the dispute resolution provisions under Article 15 of the PPA, will be resolved solely between PPA Buyer and PPA Seller, with PPA Buyer or PPA Seller, as applicable, being obligated to make such payment to the other Party (as defined in the PPA), and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (vi) PPA Buyer and PPA Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products. Any failure by PPA Buyer or PPA Seller to provide any of the information as required under clauses (iii) through (vi) of the immediately preceding sentence shall not excuse J. Aron's obligation to make payments, whether with cash or by the application of receivables, to PPA Seller by the date required under the PPA and this Assignment Agreement, except if and to the extent that any such failure causes a delay in the ability of J. Aron to make any payment or portion thereof despite J. Aron's commercially reasonable efforts to make such payment or portion thereof. PPA Buyer shall be liable to PPA Seller for any failure to pay or delay in payment to PPA Seller caused by any failure of PPA Buyer to provide to J. Aron information as required under such clauses (iii) through (iv). PPA Seller acknowledges that J. Aron 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. PPA Seller further acknowledges that J. Aron has the right to purchase receivables due from PPA Buyer for any such Assigned Products, and to the extent that J. Aron purchases such receivables due from PPA Buyer, J. Aron shall have the option to transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation of J. Aron to PPA Buyer (without limiting PPA Buyer's obligation to make any payment in cash to PPA Seller in accordance with the PPA and the second to last sentence of Section 1(b) hereof).
- (e) On or before the commencement of the Assignment Period, The Goldman Sachs Group, Inc. ("**Guarantor**") will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("**Guaranty**").

- (f) Notwithstanding any other provision of this Agreement, PPA Buyer shall be entitled to retain for its own account all California Independent System Operator (“CAISO”) revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility. 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, including, for the avoidance of doubt, PPA Seller’s right to receive Availability Incentive Payments, if any, in accordance with Exhibit D of the PPA.
- (g) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between J. Aron and PPA Buyer and has no impact on PPA Seller’s or PPA Buyer’s rights and obligations under the PPA.

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 J. Aron or PPA Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following J. Aron’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 business day following receipt by J. Aron of written notice thereof;
 - (3) delivery of a written notice by PPA Seller if any of the events described in the definition of “Bankrupt” or “Bankruptcy” in the PPA occurs with respect to J. Aron; or
 - (4) delivery of a written notice by J. Aron if any of the events described in the definition of “Bankrupt” or “Bankruptcy” in the PPA occurs with respect to PPA Seller.
- (b) Subject to Section 2(c) or (d) below, the Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a) hereof, 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) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that subject to Section 1(b) hereof, J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that subject to Section 1(b) hereof, J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period.

- (d) The Assignment Period will automatically terminate upon the effective date of a notice of termination of the Guaranty received by PPA Seller (as counterparty to the Guaranty). All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that subject to Section 1(b) hereof, J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period.

3. Representations and Warranties. PPA Buyer represents and warrants to J. Aron as of the date hereof 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 PPA Seller or PPA Buyer the right to terminate the PPA or suspend performance thereunder; and (c) all of the obligations of PPA Seller and PPA Buyer under the PPA required to be performed 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 and Exhibit N of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by written notice to the other Parties:

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email: gs-prepay-notices@gs.com

5. Miscellaneous. Article ☐ (Confidential Information), and Sections ☐ (No Consequential Damages), ☐ (Buyer's Representations and Warranties), ☐ (Amendments), ☐ (No Agency; Partnership, Joint Venture or Lease), ☐ (Severability), ☐ (Mobile-Sierra), ☐ (Counterparts; Electronic Signatures), ☐ (Electronic Delivery), ☐ (Binding Effect), ☐ (No Recourse to Members of Buyer) and ☐ (Forward Contract) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. U.S. Resolution Stay Provisions.

(a) Recognition of the U.S. Special Resolution Regimes.

- i. In the event that J. Aron becomes subject to a proceeding under (A) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (B) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a “**U.S. Special Resolution Regime**”), the transfer from J. Aron of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

ii. In the event that J. Aron or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable (“**Default Right**”)) under this Agreement that may be exercised against J. Aron are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(b) Limitation on Exercise of Certain Default Rights Related to an Affiliate’s Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that:

i. PPA Buyer and PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of J. Aron becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an “**Insolvency Proceeding**”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

ii. Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of J. Aron becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Buyer or PPA Seller being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to PPA Buyer or PPA Seller, respectively.

(c) U.S. Protocol. To the extent that PPA Buyer and PPA Seller each adhere to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section 6.

(d) Definitions. For purposes of this Section 6:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of J. Aron under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

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.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement

shall be brought in the federal courts of the United States or the courts of the State of California sitting in the city and county of San Francisco, California.

- (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.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA Seller]

By: _____

Name: _____

Title: _____

[PPA Buyer]

By: _____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By: _____

Name: _____

Title: _____

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name: _____

Title: _____

Appendix 1

Assigned Rights and Obligations

Assigned Product: All (i) PV Energy, (ii) [] and (iii) []; provided, however, that the following are expressly excluded from the Assigned Products and any and all rights and obligations with respect to the following shall remain with Buyer: [].

Assigned Delivery Point: The PNode assigned to the Facility by the CAISO.

Assigned Prepay Quantity: As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to this Assignment Agreement during the Assignment Period as described below and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and J. Aron and shall have no impact on the obligations of the parties under this Assignment Agreement or under the PPA.

Contract Price: \$[] with respect to Energy and Green Attributes; and [] with respect to rights and products and attributes associated with the maximum dependable operating capability of the Storage Facility to be charged with, store and discharge electric energy.

PPA: [].

Assignment Period: The period beginning on [], 20[] and extending through and including [], 20[]; 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 this Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided, further, that applicable provisions of this Assignment Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy under the PPA pursuant to Section [] of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both J. Aron and PPA Buyer upon twenty (20) Business Days' notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

Appendix 2

Assigned Prepay Quantity

[REDACTED] ¹

¹ SM NTD: J. Aron to provide monthly Assigned Prepay Quantity table for inclusion in Appendix 2.

Appendix 3

Form of GSG Guaranty

[____], 2025

NAME
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “**Guarantor**”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “**Company**”), to [PPA Seller Name], a limited liability company duly organized under the laws of the State of Delaware (the “**Counterparty**”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and [PPA Buyer Name], dated as of [____], 2025 (the “**Agreement**”). The Guarantor covenants to pay all reasonable expenses (including court costs and attorney’s fees) incurred by Counterparty in connection with successfully defending and enforcing its rights under this Guaranty. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except (i) for an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the “**U.S. Special Resolution Regimes**”), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____
Authorized Officer