**PURCHASE AND SALE OF CALIFORNIA RPS CATEGORY 2 PRODUCT**

**MASTER POWER PURCHASE AND SALE AGREEMENT**

**CONFIRMATION LETTER**

From: [*Seller Name*]

 [*Seller Address*]

 Attn:

To: Marin Clean Energy

 1125 Tamalpais Avenue

 San Rafael, CA 94901

 Attn: Greg Brehm

This confirmation letter (“**Confirmation**”) confirms the Transaction reached on the Trade Date between Marin Clean Energy, a California joint powers authority (“**Buyer**”) and [*Seller’s Name*] (“**Seller**”) regarding the sale and purchase of the Product under the terms and conditions of this Confirmation Letter. This Confirmation Letter is provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated [*Effective Date*], together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the “Master Agreement”) and constitutes part of and is subject to the terms and provisions of such Master Agreement. The Master Agreement and this Confirmation shall be collectively referred to herein as the “**Agreement**.” Capitalized terms used but not defined herein shall have the meaning given to them in the Master Agreement. This Agreement shall constitute the Transaction between the Parties related to the subject matter hereof and supersedes and replaces any prior oral or written confirmation, including broker confirmations, regarding this Transaction.

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| **Trade Date:** | [*Trade Date*] |
| **Effective Date:** | The Effective Date is the date upon which this Confirmation Letter has been executed by both Parties. |
| **Trade ID(s):** |  |
| **Seller:** | [*Seller Name*] |
| **Buyer:** | Marin Clean Energy |
| **Product:** | Energy and associated Green Attributes (inclusive of Renewable Energy Credits (“RECs”)) produced on or after the Trade Date and delivered, if needed, with substitute electricity from another source to Seller from the Project(s) to Buyer at the Delivery Point. Seller is not required to deliver to Buyer electrical generation directly from the Project, but may substitute energy, except that substitute energy may not be from a coal-fired or nuclear electricity generating facility. All RECs transferred shall qualify as “Renewable Energy Credit (Bucket 2)”, meaning any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as applicable to the Reporting Year(s) transferred hereunder.  |
| **Delivery Point:** | TH\_NP15\_GEN\_APND within the CAISO Balancing Authority area.  |
| **Reporting Year(s):** | [*Calendar Year*] |
| **REC Generation Period(s):** | On or after the Effective Date continuing through and including [*End Date of REC Generation Period*] |
| **Delivery Term:** | **Energy Delivery Term**: On or after the Effective Date continuing through and including [*End Date of Energy Delivery Term*].**REC Delivery Term**: [*End Date of REC Delivery Term*]  |
| **REC Contract Quantity:** | [*REC Contract Quantity, e.g., “50,000/RECs 2015 Reporting Year, unit contingent”]* WREGIS Certificates per Reporting Year, to be delivered at any time by April 15 following the end of each Reporting Year, as extended pursuant to Section 1 below, if applicable(individually and collectively, the “REC Delivery Date”), or in partial amounts during the applicable REC Delivery Term but not to exceed total amount of energy delivered during the applicable Energy Delivery Term.  |
| **Energy Contract Quantity:** | [*Energy Contract Quantity in MWh*]; the rate of delivery within the Energy Delivery Term will be at Seller’s discretion.   |
| **REC Price:** | $XX.XX/ WREGIS Certificate transferred to Buyer’s WREGIS account |
| **Energy Quality:** | WSPP Service Schedule C (“Energy”) |
| **Energy Price:** | “Energy Price” means the applicable day-ahead hourly, hour-ahead fifteen minute market, or real-time five minute market locational marginal price at the Delivery Point(s), as published by the CAISO, per MWh of energy delivered. |
| **CAISO Credit:** | “CAISO Credit” means the Energy Price paid by the CAISO to Seller.  |
| **Contract Price:** | REC Price + (Energy Price – CAISO Credit)  |
| **Project(s)** | As set forth on Schedule A, which may be amended by Seller from time to time. |
| **Delivery:**  | Product will be transferred in accordance with Section 1 below. |

1. ***Product Delivery; Transfer & Tracking***.

Energy Delivery and Associated Firming and Shaping. During the Energy Delivery Term, all incremental electricity delivered in accordance with this Transaction (“Incremental Electricity”) shall be sourced and scheduled from outside of all California Balancing Authorities and scheduled into the CAISO Balancing Authority in compliance with 399.16(b)(2) of the Public Utilities Code. Incremental Electricity shall be scheduled into a California Balancing Authority within the same calendar year as the Project Energy is generated. Seller will perform all scheduling and tagging requirements for Incremental Electricity scheduled under this Transaction. These services will be performed consistent with all applicable CAISO and WECC scheduling protocols. Buyer will take title to Energy at the Delivery Point and authorizes Seller to deliver Incremental Electricity to CAISO at the Delivery Point as agent on Buyer’s behalf. Buyer’s Purchasing Selling Entity (“PSE”), as specified by Buyer, will be shown as the last “PSE” on the “Physical Path” of the e-tag. Buyer shall notify Seller of any changes to the PSE by email. Seller will be importer of record of the Incremental Electricity into California and must include on the e-tag the Project(s) CEC RPS identification number or numbers as described in WREGIS Operating Rules and Training Documents updated from time to time so that Seller is able to receive e-tags in WREGIS. Seller shall match RECs with e-tags in WREGIS before transferring to Buyer. Seller represents and warrants to Buyer that for each hour during which Seller is delivering Energy, Seller will have sufficiently reliable firm or non-firm transmission rights to deliver the Incremental Electricity into the CAISO Balancing Authority.

REC Delivery. For each Reporting Year transferred hereunder, Seller shall initiate transfer orders for the applicable REC Contract Quantity in amounts no greater than the applicable Energy Contract Quantity to Buyer’s WREGIS account as the WREGIS Certificates become available in Seller’s WREGIS account, such that the full REC Contract Quantity is provided by the applicable REC Delivery Date**.** The REC Delivery Date shall be extended automatically until five (5) Business Days following the date that the WREGIS Certificates are first available in Seller’s WREGIS account if the WREGIS Certificates are not available in WREGIS on April 15th following the applicable Reporting Year. Upon receiving written, facsimile or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within five (5) Business Days*.* Seller will cooperate with Buyer and provide information as requested and as necessary for verification of the Green Attributes under California Public Utilities Code (PUC) Section 399.11 *et seq*. and under PUC 399.16(b)(2), specifically.

Shortfall Energy.  At any time during the Energy Delivery Term, in the event that, as a result of a transmission curtailment or other restriction on Seller’s ability to have the Energy Contract Quantity delivered to the Delivery Point, Seller delivers less than the Energy Contract Quantity during any delivery hour (“Seller’s Shortfall Energy”), Seller may upon mutual agreement of the Parties during the Energy Delivery Term make up such Seller’s Shortfall Energy by delivering an additional quantity of Energy, at mutually agreeable times, that equals the total Seller’s Shortfall Energy (“Seller’s Replacement Energy”) during the Energy Delivery Term, provided that such Seller’s Replacement Energy must be associated with a corresponding amount of Green Attributes as provided for in this Confirmation Letter and that such energy deliveries meet definition of Product.

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]

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]

2. ***Payment***. For the purposes of this Transaction, Buyer shall pay the Contract Price as follows:

 a. Invoicing and payment for Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation.

 b. Invoicing and payment for all Green Attributes delivered on WREGIS to Buyer will be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. For WREGIS Certificates delivered, within fifteen (15) Business Days of Buyer’s receipt of written, facsimile or electronic confirmation from WREGIS that a transfer order has been completed, Buyer shall pay in full to Seller the following amount: REC Price ($/REC) multiplied by the number of RECs actually delivered as evidenced by transfer of WREGIS Certificates to Buyer’s WREGIS account.

 c. The Parties acknowledge that invoicing and payments for the Energy may not occur in the same month as invoicing and payments for the Green Attributes associated with such Energy due to the delivery of the Green Attributes on WREGIS timelines.

3. ***Physical Delivery***. The Parties enter hereinto intending for the RECs and the Energy to be physically settled.

4. ***Term***. This Agreement shall commence on the Effective Date and shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

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| **[SELLER]** |  | **MARIN CLEAN ENERGY, a California Joint Powers Authority** |
| By:  |  | By:  |
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| Name:  |  | Name:  |
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| Title:  |  | Title:  |
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| Date:  |  | Date:  |

 **GENERAL TERMS AND CONDITIONS**

**1. Definitions**

1.1 Definitions. In addition to any other terms defined in the Confirmation Letter or these General Terms and Conditions, the following terms shall have the meaning ascribed to them as set forth below:

“**7x24**” means HE 0100 PPT through HE 2400 PPT, Monday through Sunday, including NERC Holidays.

“**Buyer Eligibility Default**” means the failure of any Incremental Electricity to meet or satisfy any Eligibility Requirement or element or component thereof which is in the direct control of Buyer to meet or satisfy and which arises as a result of or is caused by or attributable to an act or omission of Buyer, including a failure to accept the transfer on WREGIS, or provide information and data available to Buyer (including as provided by Seller) as may be required to verify the Green Attributes comprised in the Incremental Electricity.

“**California Renewables Portfolio Standard”** or **“California RPS**” means the California Renewable Portfolio Standard, as administered by the CEC and CPUC and as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto, Cal. Pub. Util. Code §§ 399.11 et seq., Cal. Pub. Res. Code §§ 25740-25751, CPUC D.08-04-009, CPUC D.11-01-025, & 11-12-052, and CEC RPS Eligibility Guidebook (7th Ed.), as may be subsequently modified by the CEC.

“**CEC**” means the California Energy Commission.

“**CPUC**” means the California Public Utilities Commission.

“**ERR**” is defined in Article 4 (Eligibility) below.

“**Force Majeure**” means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the Trade Date and which is not within the reasonable control of, or the result of the negligence of, the Party claiming Force Majeure, and which the claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of reasonable care. Force Majeure may not be based on (i) the loss or failure of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product; (iii) Seller’s ability to sell the Product to another at a price greater than the Contract Price; (iv) Buyer’s ability to produce Product; or (v) Buyer’s ability to purchase product similar to the Product at a price less than the Contract Price. Force Majeure may include a change in applicable law and may, to the extent such a change falls under Article 6, require a negotiated amendment to this Agreement. In the case of a Party's obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) 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;[[1]](#footnote-2) (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project 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 Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

 “**Product**” means the form of energy and Green Attributes (inclusive of RECs) described in the Confirmation Letter for this Transaction.

“**Project**” means the CEC certified ERR(s), the output from which is used to source the Product sold and purchased hereunder, identified in the Confirmation Letter; provided, however, that the Parties agree and acknowledge that the Product may come from one or more other ERR(s) and that the acceptance of the Product sourced from such other ERR(s) in no way alters the delivery obligation hereunder with respect to the Contract Quantity shown in the Confirmation Letter, and if Seller substitutes the source ERR(s) it will promptly give notice to Buyer. Seller is not required to deliver to Buyer electrical generation directly from the Project, but may substitute energy. “**Renewable Energy Credit**” or “**REC**” has the meaning provided in CPUC Decision (D.) 08-08-028, and generally means the right to claim title to Green Attributes attributable to the generation of electric energy from ERRs. RECs are measured in one megawatt increments and evidenced by the transfer of one WREGIS Certificate. “**Reporting Year**” means the period beginning January 1 of the period year and continuing until December 31 of the subject year (e.g. Reporting Year 2015 means January 1, 2015 through December 31, 2015).

“**Seller Eligibility Default**” means any failure by Seller to meet or satisfy any Eligibility Requirement or element or component thereof which is in the direct control of Seller to meet or satisfy and which arises as a result of or is caused by or attributable to an act or omission of Seller, including a failure to (i) transfer the Product to Buyer using WREGIS or such similar generation information or attributes tracking system as may be approved by or other method of transfer acceptable to the Energy Commission; (ii) match in WREGIS RECs with e-tags created in accordance with this Transaction to the extent required by the CEC for the purpose of verifying the Product; (iii) have the Project(s) certified (or certified for the Delivery Term) as an eligible renewable resource for the California RPS Program; (iv) simultaneously purchase the Project Energy and associated Green Attributes generated by the Project during the REC Generation Period without selling the energy back to the generator; (v) schedule Incremental Electricity into the CAISO Balancing Authority in an amount equal to the Contract Quantity during the REC Generation Period; or (vi) not commit or sell to a third party the Incremental Electricity delivered under this Transaction. It shall not be a Seller Eligibility Default if an applicable governmental or regulatory authority having jurisdiction determines that Product delivered or to be delivered under and accordance with the terms of this Transaction does not or will not meet or satisfy the Eligibility Requirements. “**STC**” means the standard terms and conditions adopted by the CPUC to be incorporated into California RPS agreements. “**WREGIS**” means the environmental registry and information system, which is administered by Western Renewable Energy Generation Information System that tracks the environmental and fuel attributes of generation, and any successor tracking system that both Parties agree in their reasonable commercial judgment facilitates the sale and purchase of Product and is approved by the CEC for use in the California RPS program.

“**WREGIS Certificate**” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“**WREGIS Operating Rules**” means the operating rules and requirements adopted by WREGIS.

**2**. **REPRESENTATIONS AND WARRANTIES OF SELLER**

2.1 Green Attributes. Seller hereby provides and conveys on a unit contingent basis all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. [STC-2]

2.2 Further Representations of Seller. Seller hereby represents and warrants to Buyer that

1. Seller has the right to sell the Product;

(b) the Product has never been sold or committed to any other entity for any other purpose or use; and

(c) the Product is free and clear of all liens or other encumbrances.

**3**. **ELIGIBILITY REQUIREMENTS**

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 for Portfolio Content Category 2 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]

The Parties agree that “commercially reasonable efforts” as used in this Section 3 (Eligibility) and in the “Transfer of Renewable Energy Credits” paragraph in the Transaction Confirmation Letter shall not require Seller to spend more than $10,000.00 in aggregate out-of-pocket costs and expenses (“Seller Expenditure Cap”). To the extent that the Parties have entered or may enter into other Transactions with respect to the purchase and sale of RECs, the Seller Expenditure Cap set forth herein shall apply to this Transaction only and shall not be netted out or aggregated with any other similar limit on expenditures as may be set forth in such other Transactions.

If an applicable governmental or regulatory authority having jurisdiction determines that Product delivered or to be delivered under and in accordance with the terms of this Transaction does not or will not meet or satisfy the eligibility requirements set forth above (the “Eligibility Requirements”), then if the determination is prior to delivery of any Product hereunder, the Parties will have no liability to each other for any failure to deliver or purchase the Product that is not then delivered except in the event and to the extent that the failure to meet or satisfy the Eligibility Requirements is a result of a Buyer Eligibility Default or a Seller Eligibility Default; or if the determination is after delivery of any Product hereunder, the Parties will have no liability to each other for any prior delivery of Product except in the event and to the extent that the failure to meet or satisfy the Eligibility Requirements is a result of a Buyer Eligibility Default or a Seller Eligibility Default, provided however, that Buyer shall return and re-convey the REC Product along with the Green Attributes attributable to such Incremental Electricity to Seller unused and without any encumbrance of any nature and kind whatsoever, and Seller shall refund to Buyer any REC Price previously paid therefore and attributable to REC Product and Green Attributes, in either case within ten (10) Business Days after Buyer has delivered written notice of such failure to meet or satisfy the Eligibility Requirements and re-conveyed the REC Product.

**4. CHANGE IN LAW**

This Agreement is executed for the express purposes of complying with the California RPS and to partially meet the requirements of Section 399.16(b)(2) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification and validation rules, and updating the relevant California RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or imposes language required to conform to the California RPS program, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order while maintaining the original allocation of costs, risks, benefits and burdens of the Parties under this Agreement.

**5. Confidentiality**

5.1 Confidentiality. Except as provided in this Article, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party’s prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons’ respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

5.2 Required Disclosure. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party (including the Federal Energy Regulatory Commission), that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Buyer is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**6. APPLICABLE LAW; WAIVER OF TRIAL BY JURY**

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]

**SCHEDULE A**

**List of Project(s)**

[*Project name(s), including CEC#*]

1. Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program. [↑](#footnote-ref-2)