**CALIFORNIA RPS-ELIGIBLE RENEWABLE ENERGY CERTIFICATE**

**PURCHASE AND SALE AGREEMENT**

**THIS CALIFORNIA RPS-ELIGIBLE RENEWABLE ENERGY CERTIFICATE PURCHASE AND SALE AGREEMENT** (“**Agreement**”) is made as of the following date: [*Date of Execution*] (the “**Effective Date**”) between [*Seller’s Name*] (“**Seller**”), a [*Seller’s jurisdiction of organization and type of organization*] with its principal place of business at [*Seller’s place of business*] and Marin Clean Energy, a California joint powers authority (“**Buyer**”) with its principal place of business at 1125 Tamalpais Avenue, San Rafael, CA 94901 (each, a “**Party**” and collectively, the “**Parties**”). The purpose of this Agreement is to implement the purchase and sale of renewable energy certificates from Facilities (as defined herein) which have been approved by the California Energy Commission as eligible for the California Renewable Portfolio Standard.

WHEREAS, the Parties wish to buy and sell RECs (as hereinafter defined) on the terms set forth herein;

NOW THEREFORE, in consideration of their mutual covenants herein, the Parties agree as follows:

# DEFINITIONS

“**Applicable Standard**” means the state or federal renewable portfolio standard or other mandatory or voluntary standard(s) or set of rules specified in the applicable Confirmation Letter, including any amended or successor versions as of the date of execution of the applicable Confirmation Letter, as well as on the date of Delivery of RECs.

“**Applicable Tracking System**” means the Tracking System specified in the applicable Confirmation Letter, and if no Tracking System is specified in the applicable Confirmation Letter but tradable instruments associated with all or part of the RECs to be delivered are issued by a Tracking System, that Tracking System will be the Applicable Tracking System for the quantity of RECs associated with those tradable instruments.

“**Attestation Form**” means documentation provided from Seller to Buyer transferring title to the RECs, specifying the Facility, Eligible Renewable Resource, REC quantity, Generation Period and other information with respect to the RECs sold herein as well as declarations made by Seller with respect to such RECs to be completed in accordance with and on the form required under the Applicable Standard or as otherwise specified in the applicable Confirmation Letter.

“**Business Day**” means a day on which Federal Reserve member banks are open for business, beginning at 5:00 a.m. and ending at 5:00 p.m. Pacific Prevailing Time.

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

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

“**Compliance Instruments**” means any benefits, attributes, instruments, tracking mechanisms, or rights associated with the generation of one (1) MWh of Energy from a source of renewable energy, as that is defined in an RPS, which may be created distinct from Green Attributes and transferred in the form of a certificate, credit, allowance or other indication of ownership in accordance with and for the purposes of recording compliance with an RPS obligation, including but not limited to, WREGIS Certificates.

“**Confirmation Letter**” means a Confirmation Letter in the form included herewith as Exhibit A, which is used by the Parties to effect a transaction and constitutes part of and is subject to the terms and provisions of this Agreement.

“**Contract Price**” means the amount payable by Buyer to Seller for each REC as agreed upon in the applicable Confirmation Letter.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third-party transaction costs and expenses reasonably incurred by that Party in liquidating a Terminated Transaction pursuant to Section 9.2, entering into any new arrangement that replaces a Terminated Transaction, and any charges, penalties, fines or fees imposed or assessed against the Non-Defaulting Party under the Applicable Standard on account of Delivery not occurring on the Delivery Date, as determined by the Non-Defaulting Party in a commercially reasonable manner.

“**Deliver**” and “**Delivery**” have the meanings set forth in Section 2.6.

“**Delivery Date**” means the date or period during which Delivery will occur, as specified in the applicable Confirmation Letter.

“**Eligible Renewable Resources**” means sources of renewable energy that meet all requirements of the Applicable Standard.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt-hours (MWh).

“**Facility**” or "**Facilities**" means, if specified, the resource(s) designated in the applicable Confirmation Letter from which the Seller will Deliver the RECs, and if not specified in the Confirmation Letter, Facility means the specific resource from which the Seller Delivers the RECs; in either case, the Seller represents the Facility is an Eligible Renewable Resource.

“**Force Majeure**” means an event or circumstance that materially adversely affects the performance by a Party (“**Claiming Party**”) of 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 the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided by the exercise of reasonable care, such as acts of God; fire; flood; earthquake; war; riots; or terrorism that affects one or both Parties. 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 RECs; (iii) Seller’s ability to sell the RECs to another party on terms superior to Seller's terms herein; or (iv) Buyer’s ability to purchase similar RECs from another party on terms superior to the Buyer’s terms herein. With respect to 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.

“**Gains**” means the present value of the economic benefit to a Party, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

“**Generation Period**” means the calendar year, quarter, or other specified period of time in which the Energy associated with the RECs was generated.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, 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 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 an 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 landfill gas 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 will provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“**Interest Rate**” is equal to the prime lending rate published under the heading “Money Rates” in the Wall Street Journal on the date of calculation.

“**Joint Powers Agreement**”means that certain agreement creating Buyer, with an effective date of December 19, 2008.

“**Losses**” means the present value of the economic loss to a Party, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.

“**MWh**” means megawatt-hour.

“**Product**” means Renewable Energy Certificate(s).

**“Project**” means Facility.

“**Renewable Energy Certificate**” or “**REC**” means the Green Attributes, Compliance Instruments, and Reporting Rights associated with the generation of one (1) MWh of Energy from one or more Facilities.

“**Renewable Portfolio Standard**” or “**RPS**” means a local, state, provincial or federal law, rule or regulation that requires a stated amount or minimum proportion or quantity of Energy that is sold or used by specified entities to be generated from sources of renewable energy as defined therein.

“**Reporting Period**” means a year or other period of time specified by the Applicable Standard and the applicable Confirmation Letter toward which eligible RECs may be applied or claimed.

“**Reporting Rights**” means the right to report and register the exclusive ownership of the Green Attributes and any Compliance Instruments in compliance with federal, state, or local law, if applicable, and to a federal or state agency or any other party at the Buyer’s discretion, and include without limitation those 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.

“**Seller**” means [*Seller Name*].

“**Settlement Amount**” means the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the liquidation of Terminated Transactions pursuant to Article 9.2. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount will be zero dollars ($0.00).

“**Time Period**” means the Generation Period or Reporting Period specified in the applicable Confirmation Letter.

“**Tracking System**” means the generation information system, generation attribute tracking system or other system that records renewable energy generation meeting certain requirements of the tracking system and issues tradable instruments associated with that generation.

“**Trade Date**” means the “trade date” specified in the applicable Confirmation Letter.

“**WECC**” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

“**WREGIS**” means the Western Renewable Energy Generation Information System.

“**WREGIS Certificate(s)**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“**WREGIS Operating Rules**” means the rules published by the Western Electricity Coordination Council for the rules and operations of WREGIS.

# TRANSACTION

## **Term.**

The term (“**Term**”) of this Agreement commences on the Effective Date and continues until terminated by either Party upon thirty (30) days’ written notice, except that any such termination is not effective until all payments, Deliveries and other obligations of the Parties under this Agreement and any Confirmation Letters now or hereafter entered into between the Parties have been completed.

## **Sale and Purchase Obligation.**

Seller agrees to provide to Buyer, and Buyer agrees to purchase from Seller, RECs according to the terms of this Agreement and each Confirmation Letter now or hereafter entered into between the Parties.

## **Green Attributes.**

Seller hereby provides and conveys to Buyer all Green Attributes associated with all electricity generation from the Project associated with the Product as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Product, 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.

## **Quantity and Price.**

Seller will sell and Buyer will purchase RECs in the quantities and at the Contract Prices specified in the applicable Confirmation Letters now or hereafter entered into between the Parties.

## **Disclosure.**

In order to promote the sale of RECs to its customers or potential customers, Buyer is expressly authorized to disclose to third parties Seller’s name, REC details as provided in Attestation Form or by the Applicable Tracking System, and the Attestation Form itself, if provided.

## **Delivery.**

On the Delivery Date specified in the applicable Confirmation Letter, Seller will (i) deliver RECs to Buyer in accordance with the delivery requirements of the Applicable Standard, and (ii) in accordance with the operating rules of the Applicable Tracking System, if there is an Applicable Tracking System, and (iii) an Attestation Form, if one is specified in the applicable Confirmation Letter (“**Deliver**” or “**Delivery**”). Each Party will bear its own expenses associated with Delivery. Delivery will consist of only whole RECs. If, at any time after the Delivery Date, Compliance Instruments, which are part of the RECs transacted under a Confirmation Letter, are created and issued to Seller, Seller will transfer those Compliance Instruments to Buyer within ten (10) Business Days of the date of issuance of such Compliance Instruments.

**2.6.1 Firm Delivery Obligation.**

If the applicable Confirmation Letter provides that the Seller’s Delivery obligation is a “**Firm**” obligation, the Seller will Deliver the RECs on the Delivery Date, without excuse other than Force Majeure. Unless otherwise specified in a Confirmation Letter, the default Delivery obligation thereunder will be Firm.

**2.6.2 Unit Contingent Delivery Obligation.**

If the applicable Confirmation Letter provides that the Seller’s Delivery obligation is “**Unit Contingent**”, then the actual Quantity Delivered from Seller to Buyer may vary from the quantity specified in the applicable Confirmation Letter due to the performance of the Facility.

**2.6.3 Project Contingent Delivery Obligation.**

If the applicable Confirmation Letter provides that the Seller’s Delivery obligation is “**Project Contingent**”, then Seller’s obligation to Deliver the RECs is excused to the extent that the Facility is not able to generate the Green Attributes in the Time Period specified in the applicable Confirmation Letter, due to a delay or failure in constructing or obtaining necessary approvals to construct or modify and operate the new or modified Facility, or due to other reason(s) as specified in the applicable Confirmation Letter.

* 1. **Confirmation.**

Unless otherwise agreed in writing, Seller will send Buyer a Confirmation Letter, which may be in substantially the form attached hereto as Exhibit A, as modified to support the specific RECs. Upon receipt of such Confirmation Letter, the other Party will promptly return a written acceptance thereof, which may be a signed copy of the applicable Confirmation Letter.

# REPRESENTATIONS

## **Authority.**

Each Party represents and warrants to the other Party that (i) it is a legal entity, duly formed or incorporated and validly existing and in good standing under the laws of the state of its formation or incorporation, (ii) it has the full power and authority to execute, deliver, and perform this Agreement and to carry out the transactions contemplated hereby; (iii) its execution and delivery hereof and performance of the transactions contemplated hereunder have been duly authorized by all requisite entity action, and this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligations, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws generally affecting creditors’ rights and by equitable principles; (iv) no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by it hereof; (v) none of the execution, delivery and performance by it hereof conflicts with or will result in a breach or violation of any law, contract or instrument by which it is bound; (vi) there are no proceedings by or before any governmental authority, now pending or (to the knowledge of such Party) threatened, that if adversely determined could have a material adverse effect on such Party’s ability to perform the Party’s obligations under this Agreement; (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

## **Forward Contract Merchant.**

Each Party represents that it is a “forward contract merchant” within the meaning of Section 101(26) of the Bankruptcy Code, and this Agreement and all transactions hereunder constitute “forward contracts” within the meaning of Section 101(25) of the Bankruptcy Code and that the remedies identified in this Agreement will be “contractual rights” as provided for in 11 U.S.C. § 556, as these provisions may be amended from time to time.

## **Seller Representations and Warranties.**

Seller agrees, represents, and warrants to Buyer that:

###  All RECs Delivered hereunder will meet the requirements of the Applicable Standard.

### b) Seller has not sold the RECs to any other person or entity, and that at the time of Delivery all rights, title, and interests in the RECs are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.

### c) The Energy associated with the RECs was not and will not be separately sold, marketed, or otherwise represented as renewable energy, clean energy, zero-emission energy, or in any similar manner by Seller or any of Seller’s affiliates.

d) The RECs Delivered hereunder will vest in Buyer, and Buyer will (i) have the exclusive rights to make all claims as to the RECs (ii) have the right to report and register, as applicable, the exclusive ownership of the RECs with any registry, system, agency, authority, or other party, either voluntarily or in compliance with any present or future domestic, international, or foreign law, regulation, registry or program.

e) Seller, and, if applicable, its successors, represents and warrants that throughout the Term 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 will not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

# BILLING AND PAYMENT

## **Billing and Payment Terms.**

Buyer will pay the Contract Price as applicable within fifteen (15) Business days of the later of (i) the date Buyer receives written, facsimile or electronic notice from Seller to Buyer that RECs have been Delivered, and (ii) the date Buyer receives an invoice from Seller reflecting the total amount due to Seller for the Delivered RECs (“**Payment Date**”). Unless otherwise provided in the applicable Confirmation Letter, Buyer is not obligated to pay for any RECs that have not been Delivered.

## **Late Payments.**

Without limiting any other rights provided for herein, all overdue payments will bear interest from (and including) the Payment Date to (but excluding) the date of actual payment at a rate equal to the lesser of (i) two percent (2%) over the Interest Rate or (ii) the maximum rate permitted by applicable law.

## **Disputes.**

To the extent a Party, in good faith, disputes any part of an invoice, such Party will pay the undisputed amount invoiced by the Payment Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount will be forwarded to the Party to whom such amount is owed within five (5) Business Days of such determination, along with interest at the Interest Rate for overdue payments from, and including, the Payment Date, but excluding the date paid.

## **Taxes.**

Each Party will pay the taxes lawfully levied upon it by any governmental authority and in accordance with applicable laws.

## **Invoice and Payment Instructions.**

Payment will be made by electronic funds transfer, or by other mutually agreed upon method, in immediately available funds, to the bank account name and account number as specified below, or as otherwise notified in writing to the Party making payment by the Party to whom payment is to be made.

Invoices to [SELLER] will be sent to:

[SELLER]

Address:

Attn: Contracts Manager

Phone:

Fax:

With a copy to

Payments to [SELLER] will be sent to:

[SELLER],

Address:

Attn:

Phone:

Fax:

Wiring instructions:

Bank Name:

ABA:

Account:

Invoices to Marin Clean Energy will be sent to:

Marin Clean Energy

1125 Tamalpais Avenue

San Rafael, CA 94901

Attn: Greg Brehm

Phone: 415-464-6037

Fax: 415-459-8095

Email: gbrehm@mcecleanenergy.org

Payments to Marin Clean Energy will be sent to:

Marin Clean Energy

1125 Tamalpais Avenue

San Rafael, CA 94901

Attn: Sarah Estes-Smith

Phone: 415-464-6010

Fax: 415-459-8095

Wiring instructions:

Bank Name: River City Bank

ABA:

Account:

# NOTICES

All notices, requests, demands, offers, and other communications required or permitted to be made under this Agreement will be in writing and will be effective only if delivered: (a) in person, (b) by a nationally recognized delivery service, (c) by United States Mail, or (d) by electronic mail, upon confirmation of receipt. Either Party may change its address or contact person(s) for notices by giving notice of such change consistent with this Article.

|  |  |
| --- | --- |
| If to Buyer:Marin Clean Energy1125 Tamalpais AvenueSan Rafael, CA 94901Attn: Executive OfficerPhone: 415-464-6010Fax:415-459-8095 | If to [SELLER]:[SELLER]Address:Attn: Phone: Fax:  |

# JURY TRIAL WAIVER

To the extent enforceable at such time, each Party waives its right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

# ATTORNEY’S FEES

In the event of any suit or other proceeding between the Parties with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party will be entitled to recover reasonable attorneys’ fees, costs (including at the trial and appellate levels) and expenses of investigation.

# EVENTS OF DEFAULT

An “Event of Default” means, with respect to Party (the “**Defaulting Party**”), the occurrence of any of the following:

(a) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after written notice thereof;

(b) 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 written notice thereof;

(c) 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) and such failure is not remedied within thirty (30) days after written notice thereof;

### (d) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 10.2;

#### (e) 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; or

(f) if such Party:

(i) makes an assignment or any general arrangement for the benefit of its creditors,

(ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or

(iii) otherwise becomes bankrupt or insolvent (however evidenced).

# REMEDIES UPON DEFAULT

## **Liquidated Damages.**

Buyer and Seller agree the amounts that are determined to be due from one Party to the other pursuant to this Article in its entirety represents the liquidated damages of each, and no part hereof represents a penalty.

## **Remedies.**

Upon the occurrence of an Event of Default by a Party, the other Party (the **“Non-Defaulting Party”**) may do any or all of the following: (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (**“Early Termination Date”**) to accelerate all amounts owing between the Parties and to liquidate and terminate all (but not fewer than all) Confirmation Letters (each referred to as a “**Terminated Transaction**”) between the Parties, (ii) withhold any payments due in respect of this Agreement and any other agreements between the Parties to the extent of its damages pursuant to this Article 9, (iii) suspend performance, and (iv) exercise such remedies as provided herein, including an action for damages described in this Article 9 (except as limited by Article 9.5). The Non-Defaulting Party will calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

## **Net Out of Settlement Amounts.**

The Non-Defaulting Party will aggregate all Settlement Amounts into a single amount by netting (a) all amounts that are due to the Defaulting Party for RECs that have been Delivered and not yet paid for, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Non-Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the **“Termination Payment”**) payable by the Defaulting Party. The Termination Payment, if any, is due from the Defaulting Party to the Non-Defaulting Party within five (5) Business Days following receipt of written notice thereof ("**Termination Payment Notice Date**”).

## **Calculation Disputes.**

If the Defaulting Party disputes in good faith the Non-Defaulting Party’s calculation of the Settlement Amount or Termination Payment, in whole or in part, the Defaulting Party will, within two (2) Business Days of receipt of the Non-Defaulting Party’s calculation, provide the Non-Defaulting Party a detailed written explanation of the basis for such dispute, and pay the undisputed amount of the Termination Payment within five (5) Business Days following the Termination Payment Notice Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount will be forwarded to the Party to whom such amount is owed within five (5) Business Days of such determination, along with interest at the Interest Rate for overdue payments from, and including, the Termination Payment Notice Date, but excluding the date paid.

## **Limitation on Damages.**

The Defaulting Party’s liability will be limited to direct, actual damages only, and such direct, actual damages will be the sole and exclusive remedy hereunder (except as otherwise provided in Section 9.2). Except with respect to payment of Costs, in no event will either Party be liable to the other under this Agreement for any consequential, incidental, punitive, exemplary, special or indirect damages, whether in tort, contract, or otherwise.

## **Exclusive Remedy.**

THE REMEDIES SET FORTH IN THIS ARTICLE 9 ARE THE SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF AN EVENT OF DEFAULT BY A PARTY OF ITS OBLIGATIONS HEREUNDER TO SELL OR PURCHASE RECS, AND A PARTY’S LIABILITY WILL BE LIMITED AS SET FORTH IN THIS ARTICLE. ALL OTHER REMEDIES OR DAMAGES HEREUNDER FOR FAILURE TO SELL OR PURCHASE RECS ARE HEREBY WAIVED.

## **Force Majeure.**

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, then upon such Party’s giving written notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing to the other Party, the obligations of the Claiming Party will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party will not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of, such event of Force Majeure. The Party receiving such notice of Force Majeure will have until the end of five (5) Business Days following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

# STANDARD PROVISIONS

## **Additional Documents.**

Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver such documents that may be necessary to carry out the intent and purpose hereof.

## **Assignment.**

Neither Party may assign this Agreement, in whole or in part, without the other's prior written consent, which will not be unreasonably withheld, conditioned or delayed; except that a Party may, without consent (i) pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof as collateral in connection with any financing or other financial arrangements; (ii) assign this Agreement to an affiliate if the affiliate’s creditworthiness is equal to or higher than that of the assigning Party; or (iii)  assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the assigning Party whose creditworthiness is equal to or higher than that of the assigning Party; provided, however, that in each such case, any such assignee will agree in writing to be bound by all of the terms and conditions of this Agreement and each related Confirmation Letter. Any assignment without the requisite prior consent is void ab initio. All of the rights, benefits, liabilities, and obligations of the Parties will inure to the benefit of and be binding upon their respective successors and permitted assigns. By consenting to one assignment a Party will not be deemed to have consented to a subsequent assignment.

## **Audit and Inspection.**

Seller will maintain records to assist Buyer in meeting any reporting or registration requirements associated with the RECs. Seller will provide such records upon reasonable request from Buyer. If any such examination reveals any inaccuracy in any statement, the Parties will make the necessary adjustments promptly, and amounts discovered to be so due will bear interest calculated at the Interest Rate from (and including) the date the overpayment or underpayment was made to (but excluding) the date paid.

**10.4** **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.

## **10.5 Confidentiality.**

The Parties hereto acknowledge that Buyer is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 and following). The Parties are expressly authorized to disclose the existence of this Agreement, including the quantity and term of the sale of RECs and Seller’s name, REC details as provided in the Attestation Form or by the Applicable Tracking System, and the Attestation Form (if provided). Unless otherwise provided by this Agreement or applicable law, all other terms of this Agreement are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties in advance of such disclosure; (ii) to any of such Parties’ directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree, for the benefit of the other Party, to treat such information confidentially to the same extent required by this Agreement; (iii) to the extent required to be disclosed by applicable law or legal process, and then only to the extent of such requirement; (iv) to the extent required to be disclosed under the Applicable Standard or other mandatory or voluntary standard, and then only to the extent of such requirement; or (v) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially to the same extent required by this Agreement. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of two (2) years following the expiration of this Agreement.

## **10.6 Counterparts and Electronic Delivery.**

This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, all of which taken together will constitute one and the same original instrument.

## **10.7 Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all previous or contemporaneous communications, representations, or contracts, either written or oral, that purport to describe or embody the subject matter hereof. There are no oral understandings, terms, or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

## **10.8 Exhibits.**

Any exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual agreement between the Parties unless otherwise specified in the exhibits. In the event of a conflict between this Agreement and any Confirmation Letter, the terms of the Confirmation Letter will prevail.

## **10.9 No Third-Party Beneficiaries.**

There are no intended third-party beneficiaries hereof, and this Agreement should not be construed to create or confer any right or interest in or to, or to grant any remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established herein.

## **10.10 Severability.**

Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the Parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

## **10.11 Survival Rights.**

This Agreement will continue in effect after termination to the extent necessary to allow or require either Party to enforce its rights or receive performance of the other Party’s obligations that arose under the Agreement.

## **10.12 Waiver, Amendment.**

None of the terms or conditions of this Agreement may be amended or waived except in a writing signed by both of the Parties. The Parties agree that no waiver, amendment, or modification of this Agreement will be established by conduct, custom, or course of dealing. The failure of a Party to require performance of any provision of this Agreement will not limit such Party’s right to seek such performance at a later time. Similarly, a Party’s waiver of its rights with respect to any Event of Default or any other matter arising in connection with this Agreement will not be considered a waiver with respect to any subsequent Event of Default or matter.

## **10.13 Indemnification.**

Each Party will indemnify, defend and hold harmless the other Party from and against any losses, costs, damages, demands, penalties, claims, or liabilities made by others arising from or out of any event, circumstance, act or incident arising out of the Parties’ obligations under this Agreement, except to the extent arising from such Party’s own gross negligence or willful misconduct.

## **10.14 Change in Law.**

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 otherwise revokes or eliminates the Applicable Standard, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement; provided, that the failure of the Parties to agree upon such amendment notwithstanding such good faith negotiation will not be deemed to be an Event of Default by either Party hereunder.

**10.15 No Recourse Against Constituent 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 the Joint Powers Agreement and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members in connection with this Agreement.

# SIGNATURES

Each Party represents that the person signing this Agreement on its behalf is authorized to enter into this Agreement on behalf of the Party for whom that person signs.

**IN WITNESS WHEREOF,** the Parties understand and agree to the terms and conditions contained herein and agree to be bound thereby.

|  |  |
| --- | --- |
| **[Seller]** | **Marin Clean Energy, a California Joint Powers Authority** |
| Signature |  | Signature |  |
| Name |  | Name |  |
| Title |  | Title |  |
| Date |  | Date |  |

**EXHIBIT A**

**Confirmation Letter**

This Confirmation Letter describes a transaction between Buyer and Seller for the sale, purchase and Delivery of RECs pursuant to and in accordance with the terms of the California RPS-Eligible Renewable Energy Certificate Purchase and Sale Agreement between the Parties dated [*Insert execution date of Agreement*] (the “Agreement”) and constitutes part of and is subject to the terms and provisions of the Agreement. To the extent there is a conflict between a provision of the Agreement and a provision of this Confirmation Letter, the terms of this Confirmation Letter will control for the purposes of this transaction.

Initially capitalized terms used and not otherwise defined herein are defined in the Agreement.

**Basic Commercial Terms:**

|  |  |
| --- | --- |
| Trade Date:  | [*Trade Date*] |
| Transaction Reference: | [*Transaction number*]1 ( Transaction # ) |
| Seller: | [*Seller name*] |
| Buyer: | Marin Clean Energy |
| Facility: | [*Facility name or names*]  |
| Eligible Renewable Resource Type: | [*E.g., Wind/Solar/Small Hydro/Geothermal*] |
| Geography: | WECC |
| Period Type [Generation, Reporting]: | Generation |
| Time Period: | 1) [*Insert vintage and generation period; e.g.,* “2015 vintage, generation to occur November 1, 2015 through December 31, 2015”] |
| Quantity (RECs): | [*REC Quantity*] |
| Contract Price ($/REC): | [*Contract Price*] |

**Product Specific Terms:**

|  |  |
| --- | --- |
| Applicable Standard(s): | California Energy Commission Certified RPS Eligible Energy PCC3 and Green-e eligible / certified |
| Green Attributes retained by Seller, if any: | None |
| Media Rights Conferred [yes, no] | No |

**Delivery Terms:**

|  |  |
| --- | --- |
| Delivery Date: | 1. [*REC Quantity*] delivered within 30 days of execution of this Confirmation Letter (or such later date that is mutually acceptable to the Parties). Delivery to occur through WREGIS.
 |
| Delivery Obligation [Firm, Unit Contingent, Project Contingent]: | Firm |
| Applicable Tracking System: | WREGIS |
| Attestation Form: | Yes |
| Buyer Delivery Contact: | Greg Brehm, gbrehm@mcecleanenergy.org |
| Seller Delivery Contact: | [*Name, Email*] |

The Parties agree to the transaction set forth herein and each Party represents that the person signing this Confirmation Letter on its behalf is authorized to execute on behalf of the Party for whom such person signs.

|  |  |
| --- | --- |
| **[Seller]** | **Marin Clean Energy, a California joint powers authority** |
| Signature |  | Signature |  |
| Name |  | Name |  |
| Title |  | Title |  |
| Date |  | Date |  |