



Technical Committee Meeting
Thursday, September 3, 2020
8:30 A.M.

Members of the public who wish to observe the meeting may do so telephonically via the following teleconference call-in number and meeting ID:

Dial: (669) 900-9128
Meeting ID - 810 7558 7354
Meeting Password - 418707

For Viewing Access Join Zoom Meeting:
<https://us02web.zoom.us/j/81075587354?pwd=NTdsNHJCZFZlZTQzQnVMWVAvaENFQT09>

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)
 - C.1 Approval of 7.2.20 Meeting Minutes



If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (925) 378.6732 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than **four work days** in advance of the event.

6. Pittsburgh Power Company Overview and Update (Discussion)
7. 2019 Power Portfolio Statistics Update and Power Source Disclosure Attestation (Discussion/Action)
8. CPUC Integrated Resource Plan (Discussion/Action)
9. Power Purchase Agreement with Daggett Solar Power 3, LLC (Action/Discussion)
10. Committee Matters & Staff Matters (Discussion)
11. Adjourn

DISABLED ACCOMMODATION: If you have a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.

DRAFT

MCE TECHNICAL COMMITTEE MEETING MINUTES
Thursday, July 2, 2020
8:30 A.M.

The Technical Committee Meeting was conducted pursuant to the provisions of the Governor's [Executive Order N-29-20](#) (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

Present: Ford Greene, Town of San Anselmo
Kevin Haroff, City of Larkspur
David Kunhardt, Town of Corte Madera
Greg Lyman, City of El Cerrito
Scott Perkins, City of San Ramon
Kate Sears, Committee Chair, County of Marin
Justin Wedel, City of Walnut Creek
Ray Withy, City of Sausalito and the City of Mill Valley

Absent: John Gioia, County of Contra Costa
Rob Schroder, City of Martinez

**Staff
& Others:** Jessica Brooks, Assistant Board Clerk
Michael Callahan, Senior Policy Counsel
CB Hall, Senior Power Procurement Manager
Justin Kudo, Strategic Analysis & Rates Manager
Darlene Jackson, Board Clerk
Vicken Kasarjian, Chief Operating Officer
Enyonam Senyo-Mensah, Administrative Services Associate
Jamie Tuckey, Director of Strategic Initiatives
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Kate Sears called the regular Technical Committee meeting to order at 8:32 a.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were none.

3. Public Open Time (Discussion)

There were no speakers.

DRAFT**4. Report from Chief Executive Officer (Discussion)**

CEO, Dawn Weisz, reported the following:

- Process of assigning new Board members for our two new communities has been delayed due to Covid-19, expect it will happen within the next couple of months.
- Staff will continue teleworking.
- All community meetings have been transitioned to remote access.
- Load impacts have been modest.
 - Large decrease in commercial load
 - Large increase in residential load
 - Slight decrease in overall load between 4-6%
- MCE continuing to offer free charging at our San Rafael office parking lot.
- MCE will move forward with the July 16th Board meeting.
- The Board Retreat is scheduled for Friday, September 18th. Consideration is being given to whether one full day or two partial days will work best. Please submit your Retreat preferences and suggested agenda topics to Dawn and Darlene no later than Monday, August 10th.
- Upcoming multi-year transactions requiring Board Chair counter-signature:
 - PCC1 bundled renewable energy for 2020-2021 with SoCal Edison
 - Fixed hedge solicitation for 2020-2024

5. Consent Calendar (Discussion/Action)

C.1 Approval of 4.2.20 Meeting Minutes

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

Action: It was M/S/C (Perkins/Haroff) **to approve Consent Calendar**. Motion carried by unanimous roll call vote. (Absent: Directors Gioia and Schroder).

6. Draft Electric Schedule EST – Energy Storage Tariff (Discussion/Action)

Justin Kudo, Strategic Analysis & Rates Manager and Michael Callahan, Senior Policy Counsel, presented this item and addressed questions from Committee members.

Chair Sears opened the public comment period and there were comments from members of the public Ken Strong, Dan Segedin, Howdy Goudey and Doug Wilson.

Action: It was M/S/C (Kunhardt/Perkins) **to approve Electric Schedule EST - Energy Storage Tariff**. Motion carried by unanimous roll call vote. (Absent: Directors Gioia and Schroder)

7. GHG-free Allocations from PG&E (Discussion/Action)

CB Hall, Senior Power Procurement Manager, presented this item and addressed questions from Committee members.

DRAFT

Chair Sears opened the public comment period and there were comments from members of the public Ken Strong, Dan Segedin and Howdy Goudey.

Action: It was M/S/C (Lyman/Greene) on Recommendation 1: Option 2 - **to accept and use large hydroelectric allocations for 2021 and beyond.** Recommendation 2: Option 1 - **to reject nuclear allocations for 2021 – 2025, with the option to revisit this decision in the future based on new information.** Motion carried by unanimous roll call vote. (Absent: Directors Gioia and Schroder)

8. Committee & Staff Matters (Discussion)

9. Adjournment

Chair Sears adjourned the meeting at 10:32 a.m. to the next scheduled Technical Committee Meeting on August 7, 2020.

Kathrin Sears, Chair

Attest:

Dawn Weisz, Secretary



September 3, 2020

TO: MCE Technical Committee

FROM: Kirby Dusel, Consultant (Pacific Energy Advisors, Inc.)

RE: MCE 2019 Annual Power Source Disclosure Report Attestation
(Agenda Item #07)

Dear Technical Committee Members:

SUMMARY: California Public Utilities Code requires all retail sellers of electric energy, including MCE, to disclose “accurate, reliable, and simple-to-understand information on the sources of energy, and the associated emissions of greenhouse gasses, that are used to provide electric services.”¹ Applicable regulations direct retail sellers to provide such communications to customers following each year of operation. The format for requisite communications is highly prescriptive, offering little flexibility to retail sellers when presenting such information to customers. This format has been named the Power Content Label (PCL) by the California Energy Commission (CEC). Prior to distributing the PCL to its customers, MCE annually submits a report regarding its specified power purchases to the CEC and timely completed this reporting obligation earlier in the year. This report is a required element of California’s Power Source Disclosure Program (PSD Program), which addresses information regarding the energy purchases comprising each retail seller’s supply portfolio. Both the annual report and the PCL are necessary elements of California’s PSD Program, and information reflected in the annual report is contributory to the PCL (with the annual report’s power supply breakout being inserted in the PCL).

Information presented in the PCL includes the proportionate share of total energy supply attributable to various resource types, including both renewable and conventional fuel sources. In the event that a retail seller meets a certain percentage of its supply obligation from unspecified resources, the report must identify such purchases as “unspecified sources of power.” As your Committee is aware, a limited number of MCE’s supply agreements reflect the delivery of unspecified/market power to satisfy a portion of MCE’s energy requirements – these purchases, as well as electric energy provided by the California Independent System Operation for purposes of grid balancing, have been appropriately identified as “unspecified sources of power” in the PCL. MCE’s Public Affairs team is awaiting the CEC’s release of the 2019 PCL template before preparing and distributing PCLs to MCE customers.

During the 2019 calendar year, MCE successfully delivered a substantial portion of its electric energy supply from various renewable energy sources, including wind, solar, geothermal,

¹ California Public Utilities Code Section 398.1(b)

hydroelectricity, biomass and biogas – for Light Green customers, the percentage of supply attributable to renewable energy sources approximated 60 percent (with 90 percent of total Light Green energy purchases sourced from zero or ultra-low carbon sources – note that the reflection of 1% nuclear relates to a new PSD reporting convention that decomposes purchases from Asset Controlling Suppliers by resource type; MCE made no specified nuclear purchases in 2019, and the reflection of such purchases simply relates to residual amounts of nuclear power reflected in purchases from Asset Controlling Suppliers located in the Pacific Northwest – the substantial majority of Asset Controlling Supply is comprised of hydroelectricity with small amounts of nuclear power and system power used for portfolio balancing); for Deep Green and Local Sol customers, renewable energy comprised 100 percent of the supply portfolio. A simplified representation of key information typically reflected in the PCL is presented below²:

POWER CONTENT LABEL			
ENERGY RESOURCES	2019 LIGHT GREEN POWER MIX	2019 LOCAL SOL POWER MIX	2019 DEEP GREEN POWER MIX
	(Actual)	(Actual)	(Actual)
Eligible Renewable	60%	100%	100%
-- Biomass & waste	2%	0%	0%
-- Geothermal	3%	0%	0%
-- Small hydroelectric	6%	0%	0%
-- Solar	20%	100%	50%
-- Wind	29%	0%	50%
Coal	0%	0%	0%
Large Hydroelectric	29%	0%	0%
Natural Gas	0%	0%	0%
Nuclear	1%	0%	0%
Other	0%	0%	0%
Unspecified sources of power	10%	0%	0%
TOTAL	100%	100%	100%

Consistent with applicable regulations, MCE will complete requisite customer communications following your Committee's approval of pertinent information to be included in the 2019 PCL. Customers receiving PCL communications will include those enrolled in the MCE program as of December 31, 2019 – the distribution list was derived based on prior discussions with designated CEC staff.

While preparing MCE's 2019 annual PSD report, staff performed a detailed review of all power purchases completed for the 2019 calendar year. This review included an inventory of all renewable energy transfers within MCE's Western Renewable Energy Generation Information System (WREGIS) accounts, pertinent transaction records, and requisite independent audits for MCE's voluntary Deep Green, 100% renewable energy program, and MCE's voluntary Local Sol program, which also provides 100% renewable energy to participating customers.³ Based on

² As of August 21, 2020, the California Energy Commission had yet to post California's statewide resource mix for 2019. This information is typically presented in the rightmost column of the Power Content Label reporting template. As soon as this information becomes available, MCE will appropriately incorporate it within the final 2019 Power Content Label.

³ In 2019, MCE's Deep Green and Local Sol retail service options were Green-e Energy certified products, conforming to guidelines established by the Center for Resource Solutions, the Green-e Energy program administrator. As part of

staff's review of available data and findings of the Green-e Energy independent auditor (related to the Deep Green and Local Sol product offerings), the information presented in the annual report was determined to be accurate. Again, such information will be reflected in MCE's upcoming PCL for 2019 operations.

To fulfill its obligations under the PSD Program, MCE must also provide the CEC with an attestation of its Governing Board regarding the accuracy of information included in the PSD annual reports. As MCE's Technical Committee, you have received delegated authority from the Governing Board to provide such attestation; the CEC has confirmed that such delegated authority is acceptable, subject to pertinent documentation of the Governing's Board's direction in this regard. With regard to this internally administered attestation process, applicable regulations state⁴:

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

The Technical Committee is advised that California's recently modified Power Source Disclosure regulations expand the ability of public agencies to provide self-attestations regarding the accuracy of information reflected in annual power source disclosure reports. This positive change resulted from extensive advocacy and comment submittal by CCA organizations and other public utilities during the modification of such regulations in response to AB 1110. As such, independent audits will no longer be required in future years. Evidence of such attestation must typically be provided to the CEC by October 1st, but there may be delays in such timing due to the pandemic – MCE is awaiting related guidance from the CEC in this regard.

In consideration of MCE's internal review, independent audit and applicable regulations, staff requests that your Committee accept this determination and attest to the accuracy of information included in MCE's 2019 Power Source Disclosure reports. Related information regarding the proportionate use of various fuel sources will be reflected in MCE's 2019 PCL. Should your Committee endorse staff's recommendation, a copy of: 1) this staff report; and 2) meeting minutes for today's Technical Committee Meeting will be forwarded to the CEC, thereby completing MCE's obligations under the PSD Program for the 2019 calendar year.

Fiscal Impacts: Other than the typical cost of producing and distributing Power Content Labels to MCE customers, there are no expected fiscal impacts.

Recommendation: Based on staff's review of the Light Green supply portfolio and independent, external audits completed for the Deep Green and Local Sol supply portfolios, endorse the accuracy of information presented in MCE's 2019 PSD reports for Light Green, Deep Green and Local Sol service and approve the use of statistics reflected in MCE's 2019 PSD reports for purposes of preparing MCE's 2019 Power Content Label.

this certification, MCE successfully completed an annual independent audit of power sources, ensuring the delivery of qualifying renewable energy to participating Deep Green and Local Sol customers. Such audits were timely completed, noting "no exceptions" in related audit reports.

⁴ Note that Section 1393.2.(a)(1), as referenced in the excerpt from applicable PSD regulations, refers to the completion of annual independent audits.



September 3, 2020

TO: MCE Technical Committee

FROM: John Dalessi, Technical Consultant

RE: CPUC Integrated Resource Plan (Agenda Item #08)

ATTACHMENT: MCE 2020 CPUC Compliance Integrated Resource Plan

Dear Technical Committee Members:

BACKGROUND:

Public Utilities Code Section 454.52 requires all California Public Utilities Commission (CPUC) jurisdictional load serving entities, including community choice aggregation (CCA) programs, to file an Integrated Resource Plan with the CPUC every two years. The Integrated Resource Plan encompasses a 10-year planning horizon and details the procurement plan each load serving entity has adopted for meeting the state's goals of reducing greenhouse gas (GHG) emissions by 40% from 1990 levels by 2030 and increasing to a resource mix of 60% renewable energy resources by December 31, 2030.

Section 454.52(b)(3) requires that the IRP of a CCA be submitted to its governing board for approval and shall achieve the following:

(A) Economic, reliability, environmental, security, and other benefits and performance characteristics that are consistent with the goals of achieving 40% reduction in GHG emissions from 1990 levels by 2030 and procure 50% renewable energy resources by December 31, 2030.

(B) A diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

(C) Resource Adequacy requirements.

Since 2014, MCE has prepared an annual Integrated Resource Plan ("IRP") to address MCE's GHG reduction targets and various other agency matters related to resource planning and procurement, including complementary energy programs administered and funded by MCE. This annual IRP is referred to as the "MCE Operational IRP" to distinguish it from the CPUC-required biennial IRP ("Compliance IRP"). These two IRPs are developed concurrently, in even years, and reflect consistent long-term procurement planning strategies and goals. The filing deadline for the 2020 Compliance IRP is September 1, 2020.

The 2020 Compliance IRP was prepared using the CPUC-provided Narrative Template, Resource Data

Template, and the Clean Power Supply System Calculator. As required, MCE used its assigned load forecast and other planning assumptions adopted by the CPUC in developing its Compliance IRP.

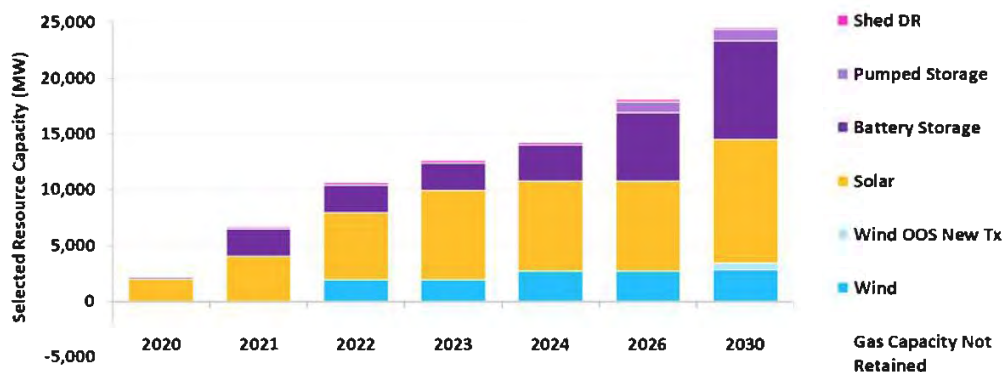
Two plans are required by the CPUC to be filed in 2020, consistent with a statewide GHG emission limit for the electric sector for 2030 of 46 MMT and a lower limit of 38 MMT. Under the 46 MMT target, MCE's plan must result in GHG emissions equal to its assigned GHG benchmark for 2030. Under the 38 MMT target, MCE's plan may result in GHG emission equal to or less than its assigned GHG benchmark for 2030.

MCE's assigned 2030 load forecast and GHG emissions benchmarks are as follows:

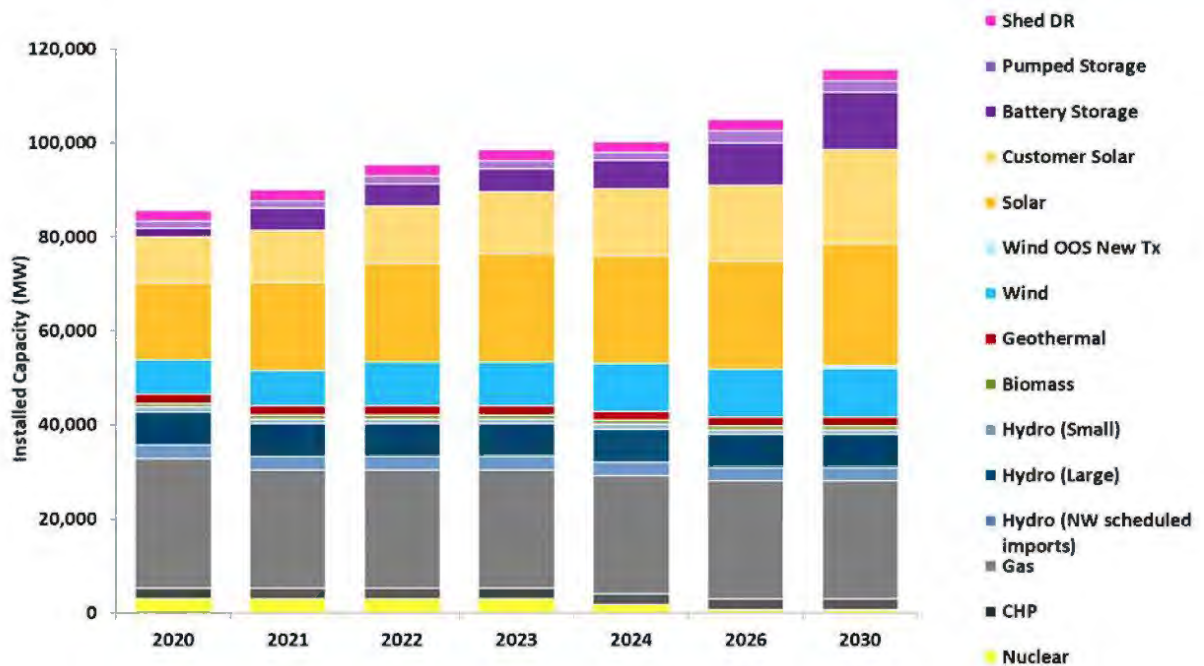
2030 Load (GWH)	Proportion of 2030 Load Within IOU Territory	2030 GHG Benchmark (MMT) – 38 MMT Scenario	2030 GHG Benchmark (MMT) – 46 MMT Scenario
5,987	7.87%	0.846	1.059

The CPUC has performed system modeling for the 38 MMT and 46 MMT electric sector emissions scenarios and has identified "Reference System Portfolios", which represent the CPUC's assumptions for an optimal portfolio that achieves the GHG benchmarks at least cost, while maintaining reliability. The 46 MMT Reference System Portfolio is summarized in the following charts:

CPUC Model Cumulative Buildout of New Resources (46 MMT Reference System Portfolio)



CPUC Model Cumulative Resources (46 MMT Reference System Portfolio)



According to the CPUC’s modeling, the majority of new generation capacity over the next ten years is expected to be comprised of solar, storage, and wind resources. Other new resources identified in the Reference System Portfolios include shed demand response and pumped storage or other long duration storage.

SUMMARY:

MCE developed its 38 MMT portfolio consistent with the renewable energy and carbon-free goals in MCE’s Operational IRP. These are summarized in the following table:

Source	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Renewable	60%	60%	60%	60%	60%	65%	70%	75%	80%	85%	85%
Large Hydro	37%	38%	40%	40%	40%	35%	30%	25%	20%	15%	15%
Other	3%	3%	0%	0%	0%	0%	0%	0%	0%	0%	0%

GHG emissions associated with MCE’s 38 MMT conforming portfolio are estimated to be 0.669 MMT in 2030, which is below the assigned 38 MMT benchmark of 0.846 MMT per year. These emissions are estimated using the CPUC Clean System Power calculator and are primarily the result of MCE’s reliance on system energy during hours when its supply portfolio does not match its load.

MCE is also required to file a 46 MMT conforming portfolio that has GHG emissions equal to its assigned GHG benchmark in 2030. MCE designed its 46 MMT conforming portfolio by reducing planned purchases of large hydro and renewable energy and increasing use of unspecified source “system energy”, which is deemed to have emissions similar to natural gas-fueled generation. The substitution of fossil-fueled supply for a portion of MCE planned hydro and renewable generation would increase GHG emissions as was required to match the assigned GHG benchmark. GHG emissions associated with MCE’s 46 MMT conforming portfolio are estimated to be 1.058 MMT per year.

In light of the fact that the 46 MMT conforming portfolio is inconsistent with MCE's policy objectives for reducing GHG emissions, MCE requested that its 38 MMT portfolio be used in all statewide planning and portfolio consolidation, regardless of whether the CPUC decides to use the 38 MMT or 46 MMT scenario as the basis for its Preferred System Portfolio.

MCE's 38 MMT and 46 MMT portfolios include plans for significant capacity additions of new renewable and storage resources by 2030 to support achievement of MCE's renewable and carbon-free energy goals, while contributing to system reliability in a responsible manner.

The 38 MMT conforming portfolio includes the following planned capacity additions:

- 690 MW of new solar plus 300 MW storage (hybrid) resources
- 230 MW of new wind
- 240 MW of new grid connected battery storage
- 45 MW of new long duration storage
- 6 MW of new shed demand response

MCE's 38 MMT conforming provides for the following overall resource mix in 2030:

- 324 MW of large hydro-electric
- 20 MW of biomass
- 3 MW of geothermal
- 13 MW of small hydro-electric
- 465 MW of wind
- 1,271 MW of solar
- 540 MW of short duration battery storage
- 45 MW of long duration storage
- 715 MW of natural gas/other (capacity-only)
- 6 MW of shed demand response

The 46 MMT conforming portfolio includes the following planned capacity additions:

- 575 MW of new solar plus 250 MW storage (hybrid) resources
- 230 MW of new wind
- 240 MW of New grid connected battery storage
- 45 MW of new long duration storage
- 6 MW of new shed demand response

MCE's 46 MMT conforming provides for the following overall resource mix in 2030:

- 14 MW of large hydro-electric
- 20 MW of biomass
- 3 MW of geothermal
- 13 MW of small hydro-electric
- 465 MW of wind
- 1,156 MW of solar
- 490 MW of short duration battery storage

- 45 MW of long duration storage
- 715 MW of natural gas/other (capacity-only)
- 6 MW of shed demand response

MCE's portfolios include a mix of existing and new resources. Approximately 1,550 MW of MCE's 2030 38 MMT portfolio is composed of new resources, reflecting MCE's role as an active player in the State's development of new renewable and storage resources. Additionally, MCE's short and long duration storage, along with its capacity-only resources will help maintain MCE's role as an active player supporting the State's need for reliability and renewable integration.

Fiscal Impacts:

The IRP is consistent with assumptions underlying MCE's financial pro forma projections. There are no direct fiscal impacts of adopting the IRP, and future resource commitments that may be made in effectuating the plan will be subject to separate approval in accordance with MCE's adopted delegation of authorities.

Recommendation:

Approve MCE's 2020 CPUC Compliance Integrated Resource Plan.



September 3, 2020

TO: MCE Technical Committee

FROM: David Potovsky, Senior Power Procurement Manager

RE: Proposed Power Purchase Agreement (PPA) with Daggett Solar Power 3, LLC (Agenda Item #09)

ATTACHMENTS: A. Power Purchase Agreement with Daggett Solar Power 3, LLC
B. Daggett Solar Power 3, LLC PPA Proposal Presentation

Dear Technical Committee Members:

SUMMARY:

As a result of this year's Open Season Procurement Process ("Open Season") for Renewable Energy and Energy Storage, staff received an offer from Daggett Solar Power 3, Limited Liability Company (LLC) for the output from a new solar photovoltaic energy (PV) installation combined with a co-located and dedicated battery energy storage system (BESS). The facility will be located in San Bernardino County and is being developed by Clearway Energy Group.

The Daggett solar and storage project is at a mature stage in the development process with an executed interconnection agreement with Southern California Edison Company, approved Conditional Use Permit and an approved Environmental Impact Report. Of the 55 unique projects submitted during Open Season, this installation had the best combination of economics and viability. Staff reviewed this offer with the Ad Hoc Contracts Committee on May 13, 2020, which recommended moving forward with contract negotiations.

Staff negotiated the attached draft PPA for the purchase of the following:

PV:

1. Energy
2. Resource adequacy (RA)
3. Renewable attributes (RECs)

BESS:

1. Discharging energy
2. Resource adequacy (RA)
3. Ancillary services (AS)

The project has a guaranteed capacity of 110 MW AC for the solar production and 55 MW for the battery storage production. The contract offers a competitive price, the ability to monetize both energy and ancillary services revenue streams with the California Independent System Operator (CAISO), the ability to dispatch stored energy at any time in any manner consistent with the operating restrictions of the storage system and a significant volume of resource adequacy. The project is well positioned for success and Clearway Energy Group has a strong track record of developing similar facilities.

Renewable energy volumes produced by the facility would complement MCE's existing portfolio. Of particular note is the flexibility to dispatch up to 220 MWh daily from the battery storage system at MCE's discretion. Additionally, the project will provide 55 MW of resource adequacy, which will ensure MCE's compliance with the California Public Utility Commission's (CPUC) mandated incremental capacity obligation.

Below is additional information regarding the prospective counterparty.

Background – Clearway Energy Group

- Headquartered in San Francisco, CA / 600 employees
- Owned by Global Infrastructure Partners (GIP) - One of the world's largest infrastructure investors with assets in the energy, transportation, water and waste management sectors
- Comprehensive and integrated services including: origination, development, construction, financing, long term ownership, management, and operations
- 4.7 Gigawatts (GW) of operating projects across 25 states including wind, solar and battery energy storage

Contract Overview – Daggett Solar Power 3 LLC

- Project:
 - 110 MW Solar
 - 55 MW/220 MWh – Lithium-ion battery energy storage system
- Capable of supplying the annual electric needs of approximately 57,000 MCE residential customers
- Project location: Unincorporated San Bernardino County, California
- Guaranteed commercial operation date: December 31, 2022
- Contract term: 15 years
- Expected annual energy production: approximately 342,000 MWhs, including all capacity and environmental attributes associated therewith
- Guaranteed energy production: 85% of projected annual deliveries
- Energy price:
 - Solar – Fixed energy price applicable to each year of contract
 - BESS – Fixed capacity price per kW-month adjusted for efficiency, availability and verified capacity
- No credit or collateral obligations for MCE
- MCE would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones
- Union labor requirement
- Pollinator friendly habitat requirement

Summary:

The Daggett Solar and Storage project is a good fit for MCE's resource portfolio based on the following considerations:

- The project size supports future renewable energy requirements
- The energy storage will enable MCE to:
 - Dispatch energy to the grid during optimal hours
 - Monetize CAISO market revenue in the form of ancillary services
 - Self-provide resource adequacy
- Timing of initial energy deliveries under the agreement is aligned with expected reductions in renewable energy deliveries under existing agreements
- The project is being developed and will be operated by an experienced team, which is currently supplying power from various projects to other Load Serving Entities including but not limited to Pacific Gas & Electric, Southern California Edison, East Bay Community Energy and Clean Power Alliance.
- The project is located within California and meets the highest value renewable portfolio standards category ("Bucket 1")
- The project is highly viable, with all major pre-construction milestones in place
- Both the energy and capacity from the project are competitively priced

Recommendation: Authorize execution of the Power Purchase Agreement with Daggett Solar Power 3 LLC for renewable energy supply and BESS capacity.

CLEARWAY - DAGGETT**RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET**

Seller: Daggett Solar Power 3 LLC, a Delaware limited liability company

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A separately metered 110 MW portion of an approximately 482 MW solar photovoltaic generating facility, along with a co-located and dedicated 55 MW/220 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, as further described in Exhibit A and subject to adjustment under Sections 2.6, 2.7 and Exhibit B, Section 5.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Complete
CEC Precertification Obtained	Complete
Documentation of Conditional Use Permit if required: [X] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [X] EIR	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Expected Construction Start Date	06/30/2022
Full Capacity Deliverability Status Obtained	12/31/2022
Initial Synchronization	10/01/2022
Network Upgrades completed	12/31/2022
Expected Commercial Operation Date	12/31/2022

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

Expected Energy: (As may be adjusted by Section 2.8 or Exhibit B, Section 5.)

Contract Year	Expected Energy (MWh)
1	342,577
2	340,864
3	339,160
4	337,464
5	335,777
6	334,098
7	332,427
8	330,765
9	329,111
10	327,466
11	325,828
12	324,199
13	322,578
14	320,965
15	319,361

Guaranteed Capacity: 110 MW, as may be adjusted by Section 2.6 or Exhibit B, Section 5.

Storage Contract Capacity: 55 MW, as may be adjusted by Section 2.7 or Exhibit B, Section 5.

Storage Contract Output: 220 MWh

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	\$ [REDACTED] /MWh (flat with no escalation)

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	\$ [REDACTED] /kW-mo. (flat with no escalation)

Product:

- ☒ PV Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status on and after the RA Guarantee Date
- ☒ Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Seller Development Security: The sum of \$[REDACTED]/kW of Guaranteed Capacity and \$[REDACTED]/kW of Storage Contract Capacity (as such Guaranteed Capacity and Storage Contract Capacity are measured as of the Effective Date).

Seller Performance Security: The sum of \$[REDACTED]/kW of Guaranteed Capacity and \$[REDACTED]/kW of Storage Contract Capacity (as such Guaranteed Capacity and Storage Contract Capacity are measured as of the Commercial Operation Date).

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2020 (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.

“**Actual Round-Trip Efficiency**” means the measured round-trip efficiency of the Storage Facility, as a percentage, measured in accordance with Exhibit O.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the Charging Energy for such period multiplied by the Maximum Round-Trip Efficiency from (ii) the Charging Energy for such period.

“**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”, “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. For purposes of this Agreement, Clearway Energy, Inc. shall be deemed to be an Affiliate of Seller.

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

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

“Approved Forecast Vendor” means (x) CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Sections 4.3(c) and 4.3(d).

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

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

“Available Generating Capacity” means the capacity of the Generating 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” 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 to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility, Facility Energy or Ancillary Services, including where the Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated or discharged by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (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 directed by CAISO during Settlement Intervals with a Negative LMP, (iii) a reduction of Facility Energy due to Buyer’s participation in the Ancillary Services market, or (iv) a reduction in PV Energy due to Buyer’s issuance of Charging Notices or Discharging Notices in violation of the Operating Procedures.

“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, (b) a Buyer Curtailment Order, or (c) Buyer’s Default; 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 Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(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” has the meaning set forth in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, 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 associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

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

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

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

“CEQA” means the California Environmental Quality Act.

“Change of Control” means 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 tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"Charging Energy" means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility pursuant to a Charging Notice or in connection with a Storage Capacity Test. All Charging Energy shall be used solely to charge the Storage Facility, and, unless otherwise agreed by the Parties in writing, all Charging Energy shall be generated solely by the Generating Facility.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, including in connection with a Storage Capacity Test, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"Claim" has the meaning set forth in Section 16.2(a).

"COD Certificate" has the meaning set forth in Exhibit B.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

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

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" has the meaning set forth in Exhibit B.

"Commercial Operation Delay Damages" means for each day an amount equal to the aggregate Development Security amount required hereunder, divided by sixty (60).

"Compliance Actions" has the meaning set forth in Section 3.11.

"Compliance Expenditure Cap" has the meaning set forth in Section 3.11.

"Confidential Information" has the meaning set forth in Section 18.1.

"Construction Start" has the meaning set forth in Exhibit B.

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

“Contract Price” has the meaning set forth on the Cover Sheet and is each of the Renewable Rate and the Storage Rate.

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

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

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

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“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 or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Installed PV Capacity.

“Curtailment Order” means any of the following:

(a) a curtailment ordered by CAISO, including through the ADS or a CAISO Operating Order, for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

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

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

(d) a curtailment in accordance with Seller's obligations, or due to physical or operational limitations on the transfer of electric power, 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.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the dollar amount that equals the amount of the Development Security.

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

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

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

"Deemed Delivered Energy" means the amount of energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period or Buyer's unexcused failure to take delivery of the Product, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy) delivered to Buyer pursuant to Section 4.3(d) for the period of time during such Buyer Curtailment Period (or other relevant period), *minus* the amount of Energy that the Generating Facility produced and delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant 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 4.10(e).

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

"Delivery Term" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

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

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage 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 Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“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, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging 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 generated by the Generating Facility.

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

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

“Excess MWh” has the meaning set forth in Exhibit C.

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

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

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer as PV Energy or to the Storage Facility as Charging Energy from the Generating Facility during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the Generating Facility and the Storage Facility.

“Facility Energy” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use, as it impacts delivered energy.

“FERC” means the Federal Energy Regulatory Commission.

“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 Energy due to such failure of Seller to provide such notification, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the 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).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“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, now, or 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, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. 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.

“Generating Facility” means the separately metered 110 MW portion of the solar photovoltaic 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 (i) PV Energy to the Delivery Point, (ii) Charging Energy to the Storage Facility and (iii) Discharging Energy to the Delivery Point; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“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.

“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. If the Facility 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 shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

“Guaranteed Capacity” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.6 or Exhibit B, Section 5.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to eighty-five percent (85%) of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

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

“Guarantor” means, with respect to Seller, any Person that (a) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s or has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (d) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (e) 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 MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of

Scheduled Energy.

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

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

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

“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW at the Storage Facility Meter, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Interconnection Agreement” means the interconnection agreement entered into by Seller or an Affiliate pursuant to which the Facility will (a) be interconnected with the Transmission System and (b) will have capacity rights equal or greater than the amount of the Guaranteed Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

“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 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.

“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, 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 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, 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 at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual 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.

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. 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 Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Maximum Round-Trip Efficiency” means ■■■%.

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

“Minimum Round-Trip Efficiency” means ■■■%.

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

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

“Moody’s” means Moody’s Investors Service, Inc.

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

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

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP 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.

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

“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.

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

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

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such 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.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“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.

“Portfolio Content Category 2” or **“PCC2”** 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)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** 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)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

“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 generating facilities with integrated storage 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 with integrated storage 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” means the production tax credit established pursuant to Section 45 of the Code.

“PV Energy” means that portion of Energy that is delivered directly to the Delivery Point and is not Charging Energy or Discharging Energy.

“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 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

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

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during which the Net Qualifying Capacity of the Generating

Facility for such month was less than the Qualifying Capacity of the Generating Facility for such month.

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

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

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Code); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits equivalent to those that would have been provided by the Generating Facility with respect to the applicable RA Shortfall Month.

“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 (subject to the Operating Restrictions set forth in Exhibit Q).

“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.

“Restricted Transferee” [REDACTED]

“Round-Trip Efficiency Factor” means (a) if the Actual Round-Trip Efficiency is greater than or equal to the Maximum Round-Trip Efficiency, [REDACTED] (%), (b) if the Actual Round-Trip Efficiency is less than the Maximum Round-Trip Efficiency but greater than or equal to the Minimum Round-Trip Efficiency, [REDACTED], or (c) if the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, [REDACTED] (%).

“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 WREGIS Account” has the meaning set forth in Section 4.10(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.

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

“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) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

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

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

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

“Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as may be adjusted pursuant (i) to Section 2.7 or Exhibit B, Section 5 or (ii) Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“Storage Facility” means the 55MW/220 MWh energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage 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.

“Storage 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 Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Points” means the locations of the Storage Facility Meters at the Site.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

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

“Supplementary Storage Capacity Test Protocol” has the meaning set forth in Exhibit O.

“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 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 or storage facilities.

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

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

“Test Energy” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO

and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“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 Clearway Renew LLC, a Delaware limited liability company.

“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 4.10(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 May 1, 2018, 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" 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) 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

(l) 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 and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality

obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Conditions Precedent to Delivery Term.**

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

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity on the Commercial Operation Date, and (iii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Battery Capacity on the Commercial Operation Date;

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

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

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) 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;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after commercial operation of the Generating Facility, expects to timely complete) all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Generating Facility, QRE service agreements, and other appropriate documentation required to effect Generating Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system;

(g) Seller has satisfied its requirements with the union labor requirements set forth in Section 13.4.

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

(i) Seller has paid Buyer or authorized Buyer to draw on the Development Security for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation 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 Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 Remedial Action Plan. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's Default, Seller shall submit to Buyer, within ten (10) Business Days of either the third such missed Milestone or the end of the ninety (90) day period for any single uncompleted Milestone, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, 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.

2.5 Termination Prior to the Commercial Operation Date. Seller shall have the right to terminate this Agreement prior to the Commercial Operation Date by providing no less than ten (10) days' Notice to Buyer of the termination date. In connection with such termination, Seller shall pay to Buyer within ten (10) Business Days after such termination date an amount equal to the Damage Payment. Upon such termination and payment by Seller in accordance with this Section 2.5, 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 Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement in accordance with Section 8.7.

2.6 Guaranteed Capacity Adjustment. At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer that such adjustment is reasonably required in order to optimize the design and/or efficiency of the Facility, adjust the Guaranteed Capacity upward or downward by up to one and a half (1.5) MW. Upon such Notice, each reference to the

Guaranteed Capacity under this Agreement (except for purposes of calculating the Development Security) shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions.

2.7 **Storage Contract Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days' Notice to Buyer that such adjustment is reasonably required in order to optimize the design and/or efficiency of the Facility, adjust the Storage Contract Capacity upward or downward by up to one and a half (1.5) MW. Upon such Notice, each reference to the Storage Contract Capacity under this Agreement (except for purposes of calculating the Development Security) shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions.

2.8 **Expected Energy Adjustment.** If Seller adjusts the installed capacity pursuant to Section 2.6, then promptly following the later of (a) the Commercial Operation Date, and (b) if applicable, the Guaranteed Capacity build-out period described in Section 5 of Exhibit B, the Expected Energy shall be adjusted pro rata in proportion to such adjusted installed capacity without the need for written amendment by the Parties.

2.9 **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats.** If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(a) In addition, within thirty (30) days of the Commercial Operation Date, Seller shall submit to Buyer an updated pollinator-friendly solar scorecard ("**Pollinator Scorecard**") in the form attached as Exhibit U. Seller shall provide Buyer with an updated Pollinator Scorecard within sixty (60) days after each three (3) Contract Year period during the Delivery Term. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on the Pollinator Scorecard.

(b) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

- (i) 36-inch minimum height above ground of the lowest edge of the solar panels;
- (ii) Burying conduits and wiring with homeruns tight to bottom of panels;
- (iii) Designing inter-row access/spacing to enable vegetation management; and
- (iv) Utilizing BeeWhere registration if bee hives are placed onsite.

Additional pollinator reference materials can be found at EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

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 the Product produced by or associated with the Facility, and Buyer will purchase all the 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 or use for another purpose 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 for which the associated Facility Energy is not or 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, stored 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.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. 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, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall remit to Seller all CAISO revenues arising from such Test Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request 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. Seller's obligations under this Section 3.7 are subject to the provisions of Section 3.11.

(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 or Interim Deliverability Status for the Generating Facility from the CAISO and shall perform all actions necessary to ensure that the Generating Facility qualifies to provide Resource Adequacy Benefits to Seller. On and after the RA Guarantee Date and thereafter throughout the Delivery Term, and subject to Section 3.11, 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 actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Subject to Section 3.11, for each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, (the “**RA Shortfall Amount**”) multiplied by the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that the 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 at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.11, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, and subject to Section 3.11, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Generating 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 Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy 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. As used in this Section 3.10(a), “certified by the CEC” means the Facility has received CEC Certification and Verification.

(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.

(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 WREGIS will be taken prior to the first delivery under this Agreement.

3.11 Change in Law.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the definition of Green Attributes and Capacity Attributes, including amendments to this Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) require submission of any reports, data, or other information required by Governmental Authorities; or (iii) take any other actions that may be requested by Buyer to assure that the Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at twenty-five thousand dollars (\$25,000.00) per MW of Guaranteed Capacity in aggregate over the Contract Term and Two Hundred and Fifty Thousand Dollars (\$250,000) for any Contract Year (the "**Compliance Expenditure Cap**"), provided, however, that if the Compliance Expenditure Cap for any Contract Year is reached, Seller shall reimburse Buyer for any Accepted Compliance Costs paid by Buyer pursuant to Section 3.11(d) below during any subsequent Contract Year(s) so long as the Compliance Expenditure Cap for such Contract Year and the Compliance Expenditure Cap for the Contract Term have not been reached.

(c) 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.

(d) 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.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, Seller shall complete the Compliance Actions covered by such Accepted Compliance Costs as agreed upon by the Parties, provided that under no circumstances shall Seller be obligated to incur costs and expenses in excess of the Accepted Compliance Costs that have been agreed to be reimbursed by Buyer.

3.12 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including to facilitate the use of grid energy to provide Charging Energy; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any unreimbursed expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the 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. 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, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, 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 during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

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

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

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

(a) Annual Forecast of 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 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 Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy 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 Energy for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly expected Energy. These Day-Ahead Forecasts shall be sent to the Scheduling Coordinator. If Seller fails to provide Buyer or its Scheduling Coordinator with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any real-time forecast or Buyer's best estimate based on information

reasonably available to Buyer. For the avoidance of doubt, receipt by the Scheduling Coordinator of a Day-Ahead Forecast in the form of the CAISO VER Forecast or a Day-Ahead Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(c).

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify the Scheduling Coordinator of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected 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, Storage Capacity, or hourly expected 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 Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use best efforts to notify Buyer or its Scheduling Coordinator of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer or its Scheduling Coordinator of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer or its Scheduling Coordinator; provided that Buyer or its Scheduling Coordinator specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer or its Scheduling Coordinator fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer or its Scheduling Coordinator. For the avoidance of doubt, receipt by the Scheduling Coordinator of Real-Time Forecasts in the form of the CAISO VER Forecast or a Real-Time Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(d).

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

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not provide the notification required in Section 4.3(e) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy due to the failure of Seller to provide such notification, Seller shall be responsible for a Forecasting Penalty. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.11, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the

Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility and delivered to the Delivery Point, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(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 excess of the Curtailment Cap at the Renewable Rate.

(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 the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed to Buyer by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices pursuant to this Section 4.4(d) that are not otherwise

required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.11.

4.5 Charging Energy Management.

(a) Upon receipt of a valid Charging Notice, but subject to Section 4.5(b), Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement.

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

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority or as provided in Section 4.4(a). If, during the Delivery Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage 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 Storage 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 Storage Product) associated with such discharge.

(d) During the Delivery Term, Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments 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 Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority, 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 Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Procedures.

(f) If the Operating Restrictions are amended to permit Buyer to charge the Storage Facility from a source other than the Generating Facility (i) Buyer will be responsible for all costs, expenses and other liabilities relating to the charging of the Storage Facility from a source other than the Generating Facility, including the cost of energy used to charge the Storage Facility and (ii) the Parties will amend this Agreement to the extent necessary so that Facility Energy delivered by Seller to the Delivery Point is fully paid for by Buyer (unless Buyer is otherwise not required to pay for such Facility Energy hereunder) without reduction due to netting of consumption due to such charging against output of such Facility Energy or treated as Charging Energy.

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.** Unless otherwise agreed, Seller shall provide Buyer with Notice of Planned Outages at least one hundred twenty (120) days prior, *provided*, that (i) no Notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than three percent (3%) of the Installed PV Capacity and three percent (3%) of the Installed Battery Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is reasonably acceptable to Buyer. 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. Subject to the foregoing, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%) during daylight hours, 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, (iv) the Parties agree otherwise in writing, or (v) such outage is required to perform a Storage Capacity Test or measurement of the Actual Round-Trip Efficiency, in each case, performed at Seller's request (any of the scheduled maintenance permitted by the foregoing Section 4.6(a), a "**Planned Outage**").

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

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

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

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

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, and Curtailment Periods ("Lost Output"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 Storage Availability.

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month 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 payment for the Storage 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 O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Such representative(s) shall not interfere with the Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Other than as may be agreed pursuant to Section 3.11, all other costs of any Storage Capacity Test shall be borne by Seller.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test deviates from the then current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant Section 2.7 and Exhibit B) shall become the new Storage Contract Capacity, effective as of the first day of the month following the completion of the test, for all purposes under this Agreement, including compensation under Exhibit C, until the next such Storage Capacity Test.

4.10 **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 4.10(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date or as soon as reasonably possible thereafter, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward 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 Forward 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 ninety (90) day 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 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. 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 for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. 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 Adjusted 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; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Green Attributes within ninety (90) days after the Deficient Month (x) upon a schedule reasonably acceptable to Buyer, (y) such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer, and (z) such Replacement Green Attributes are consistent with, and do not cause Buyer to be out of compliance with, the requirements of PUC Section 399.13(b) and CPUC Decision D.17-06-026 as applicable to Buyer. If there is a shortfall of WREGIS Certificates caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.11, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 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.

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 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 Energy or Discharging Energy to Buyer.

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 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 agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) provide for separate metering and separate CAISO resource IDs for each of the Generating Facility and Storage Facility.

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. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. 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 T. 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 Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Generating Facility and a single CAISO resource ID dedicated exclusively to the Storage Facility. Seller shall not obtain additional CAISO resource IDs for the Generating Facility, the Storage Facility, or the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer.

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 make good faith efforts to deliver an invoice to Buyer for Product no later than ten (10) Business Days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product 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 by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within twenty-five (25) days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due

date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month LIBOR 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 five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, 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 \$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; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. 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.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect, provided that Seller shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Development Security or change the form of Development Security to another form of Development Security from time to time upon reasonable prior written notice to Buyer.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall 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 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; volcanic eruption; flood; epidemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party.

(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, Buyer’s ability to buy the Product, or any component thereof at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under the 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 except to the extent such event 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 Generating Facility or the Storage Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) 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 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 the 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)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) 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; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties' performance hereunder may not be immediately or readily ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 once any impacts of COVID-19 result in any delay or nonperformance hereunder.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) additional months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12) month period despite exercising diligent efforts and (b) Seller provides to Buyer prior to the expiration of the original twelve (12) month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller's execution of the plan described in Section 10.4(b)(i), (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month, and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer, or in otherwise resolving the Force Majeure Event. 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 thirty (30) 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 achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.7, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Sections 11.1(b)(v), 11.1(b)(vii) and 11.1(b)(viii), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(vi), 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 or discharged by the Facility;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days of the Guaranteed Commercial Operation Date;

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

(iv) the failure by Seller to achieve the Construction Start Date within one hundred eighty (180) days of the Guaranteed Construction Start Date;

(v) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period based on the most recent Average Expected Energy Report provided by Seller, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum, or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(vi) if, in any two (2) consecutive Contract Years during the Delivery Term, the average Monthly Storage Availability is, in each Contract Year, less than seventy percent (70%);

(vii) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year;

(viii) if, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year;

provided that, with respect to Sections 11.1(b)(v)-(viii), there shall be no Event of Default by Seller if the reason that the Monthly Storage Availability or Adjusted Energy Production was not at least equal to the percentages set forth in Sections 11.1(b)(v)-(viii) is due to (x) major equipment failure that cannot be reasonably replaced and appropriately permitted within six (6) months, so long as such failure was not due to the negligence of Seller and Seller has taken reasonable actions necessary to cure such major equipment failure (including, but not limited to, placing an order for replacement equipment) or (y) a Force Majeure Event;

(ix) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein;

(x) 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

(xi) 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 A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than forty-five (45) days prior to the expiration of the outstanding Letter of Credit.

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) or 11.1(b)(iv)) 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.

11.7 Seller Pre-Commercial Operation Liability Limitations. Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

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. ON AND BEFORE THE SIXTH ANNIVERSARY OF THE

COMMERCIAL OPERATION DATE, THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

(e) The Facility is located in the State of California.

(f) Seller 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.

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.** 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, through its contractors, is required to enter into project labor agreements with participating unions of similar scope and requirements as set forth under the terms of that certain Letter Agreement between Buyer and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the “PLA”). The PLA applies to “Covered Work” (as defined therein) for solar photovoltaic and associated energy storage projects for which Buyer is the power supply offtaker. As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

13.5 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit S, or a similar questionnaire, at the reasonable request of Buyer and 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. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys’ fees.

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 financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(a) Buyer shall give notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

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

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

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

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

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

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

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

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

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

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

(i) 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. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, (x) to an Affiliate of Seller or (y) on or after the Construction Start Date, if:

- (a) The assignee is a Permitted Transferee [REDACTED]
 - (b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment or Change of Control;
 - (c) Except in the case of a Change of Control, Seller has provided Buyer a written agreement or certificate signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment;
 - (d) Seller has provided Buyer with a certificate signed by the Person to which Seller wishes to assign its interests certifying that such Person meets the definition of a Permitted Transferee;
 - (e) Such transfer or assignment is not in violation of applicable Law;
- and
- (f) [REDACTED]

Notwithstanding the foregoing, neither the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller subsequent to such foreclosure or transfer or assignment in lieu of foreclosure to a Permitted Transferee) shall require Buyer's consent. Except as expressly provided above, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until the Notice under clause (b) and the agreements and certificates required under clauses (c) and (d), if applicable, by the assignee have been received by Buyer.

14.4 Buyer Limited Assignment. Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("**Limited Assignee**") that has or provides a parent guaranty, in form and substance reasonably acceptable to Seller, from an entity that has creditworthiness equal to or better than the creditworthiness of Buyer (measured as of the Effective Date) of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit V, with the blanks in such form completed in Buyer's sole discretion. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) 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 forecasted generation, 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, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein. Limited Assignee and Buyer shall comply with all reasonable requests received by any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

14.5 **Restricted Transferees.**



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 Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

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, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws, (ii) negligent or tortious acts, errors, or omissions or (iii) intentional acts or willful misconduct in each case by or 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.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

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

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

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Generating Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(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 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 the contractor under its engineering, procurement, and construction contract for the Facility to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. The contractor shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). The contractor shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least ten (10) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. 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 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **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’s actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Limited Assignee, so long as the Person 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.

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 upon 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 on following page]

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

DAGGETT SOLAR POWER 3 LLC, a Delaware limited liability company **MARIN CLEAN ENERGY, a California joint powers authority**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Daggett Solar Project

Site includes all or some of the following APNs: See attached Schedule 1.

County: San Bernardino County

CEQA Lead Agency: San Bernardino County

Type of Generating Facility: Solar photovoltaic electricity generating facility

Type of Storage Facility: A lithium-ion battery energy storage system which is capable of receiving Charging Energy from the Generating Facility and in the form of grid energy; provided, that the Storage Facility shall not receive Charging Energy from any source other than the Generating Facility without the prior written agreement of both Parties.

Guaranteed Capacity: See definition in Section 1.1.

Storage Contract Capacity: See definition in Section 1.1.

Maximum Facility Output: 110 MW

Dedicated Interconnection Capacity for Facility: 110 MW

Maximum Charging Capacity: 55 MW

Maximum Discharging Capacity: 55 MW

Maximum Stored Energy Level: 220 MWh

Operating Restrictions of Storage Facility: See Exhibit Q

Delivery Point: Southern California Edison's Kramer substation

PNode: PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder, to reflect the PNode then closest to the Facility.

Participating Transmission Owner: Southern California Edison

Schedule 1
List of APNs

0515-011-03	0515-061-02
0515-011-14	0515-041-18
0515-011-15	0515-041-09
0515-021-06	0515-111-05
0515-021-07	0515-111-06
0515-051-24	0515-111-07
0515-051-25	0515-111-08
0515-051-31	0515-111-09
0515-051-36	0515-131-11
0515-051-38	0515-131-12
0515-041-21	0515-131-13
0515-041-22	0515-131-36
0515-041-28	0515-111-10
0515-041-29	0515-061-19
0515-051-03	0515-071-02
0515-051-19	0515-041-15
0515-051-04	0515-041-25
0515-051-07	0515-111-12
0515-051-09	0515-111-13
0515-051-14	0515-111-14
0515-051-15	0515-111-15
0515-051-16	0515-111-16
0515-151-09	0515-151-04
0515-051-17	0515-151-30
0515-051-22	0515-151-29
0515-051-23	

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Guaranteed Construction Start Date.

- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2 b. of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed 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)(ii) or 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The **“Commercial Operation Date”** shall be the later of (x) sixty (60) days prior to the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by 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 for the Facility by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of such Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
 - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and within ten (10) days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first sixty (60) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation 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 receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
 - a. a Force Majeure Event occurs, including a Force Majeure Event that delays Seller from acquiring all material permits, consents, licenses, approvals or authorizations from any Governmental Authority required for Seller to own, construction, interconnect, operate or maintain the Facility; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of best efforts by Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a) and 4(b) of this Exhibit B under the Development Cure Period

shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event; provided, however, that Seller shall be allowed additional day-for-day extensions beyond the one hundred twenty (120) day cap, not to exceed a total of cumulative extensions granted under Section 4(a) and 4(b) of this Exhibit B under the Development Cure Period of two-hundred forty (240) days, solely to the extent due to a Force Majeure Event related to COVID-19. Notwithstanding the foregoing, no extension under the Development Cure Period 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, but in no case more than thirty (30) days after Seller became 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 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.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

- a. *Guaranteed Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
- b. *Storage Contract Capacity.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Adjusted Facility Energy. Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, subject to paragraph (c) below.

(b) Deemed Delivered Energy. Buyer shall pay Seller the Renewable Rate for each MWh of Deemed Delivered Energy above the Curtailment Cap, subject to paragraph (c) below.

(c) Excess Contract Year Deliveries.

(i) If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh.

(ii) If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to \$0.00/MWh.

(d) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in 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.

(e) Curtailment Payments. Notwithstanding any provision to the contrary, Seller shall receive no compensation from Buyer for (i) Adjusted Facility Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the Renewable Rate.

(f) Payment for Storage Product. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* the Storage Contract Capacity for such month *multiplied by* the Round-Trip Efficiency Factor *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product (other than Discharging Energy which is part of Adjusted Facility Energy).

(g) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(h) Tax Credits. The Parties agree that the none of the Renewable Rate, the Storage Rate or the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits 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 Credits. Except as provided in Section 12.1, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits 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 Adjusted Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, 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 Test 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. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date.

(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 penalties imposed on Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that 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 are caused by Buyer's (as Scheduling Coordinator) failure to perform its must-offer requirements under Section 40.6 of the CAISO Tariff or caused by Buyer's other actions (as Scheduling Coordinator) in which case such Non-Availability Charges shall be the responsibility of Buyer and for Buyer's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder), outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

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

(e) Dispute Costs. Buyer (as the Facility's SC) may be required 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.

(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 Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller

to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. 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
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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**

	Day																													
HE	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
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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 Contract Year, in \$/MWh, which is the sum of (a) the weighted average of the Integrated Forward Market hourly price for all the Reference Hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point weighted by hourly and monthly volumes in the most recently delivered Average Expected Energy Report, plus (b) the lesser of (x) \$50.00/MWh and (y) the market value of Replacement Green Attributes, as reasonably determined by Buyer.

D = the Renewable Rate for the Contract Year, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: Adjusted Facility Energy + Lost Output.

“Lost Output” has the meaning given in Section 4.7 of the Agreement.

“Reference Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 7:00 AM to 9:59 PM) on Monday through Sunday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
5. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
6. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
7. Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on [Date].
8. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [Date].
9. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED PV CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed PV Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF INSTALLED BATTERY CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Battery Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the Storage Capacity Test demonstrated a maximum dependable 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: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Daggett Solar Power 3 LLC, a Delaware limited liability company (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

2. the precise Site on which the Facility is located is, which must include some or all of the previously identified APNs (such description shall amend the description of the Site in Exhibit A): _____.

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

DAGGETT SOLAR POWER 3 LLC,

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901

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 Renewable Power Purchase Agreement dated as of [Date of Contract / Agreement should be in the past or on the date of issuance. In case of future contract date, the Letter of Credit text will be adjusted to reflect this change] and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXXX] 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 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, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [email to *[bank email address]*] (if presented by fax it must be followed up by a phone call to us at [XXXXXXX] or [XXXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

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 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 registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date 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 subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: 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: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[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 Renewable Power Purchase 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) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within forty-five (45) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Marin Clean Energy, a California joint powers authority 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, a California joint powers authority 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 Daggett Solar Power 3 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, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding 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 Daggett Solar Power 3 LLC, a Delaware limited liability company (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

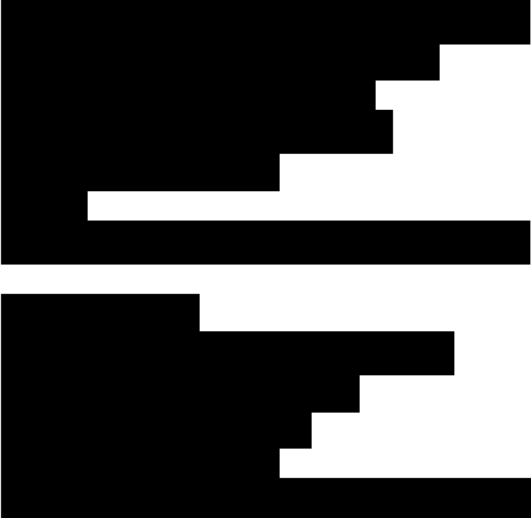

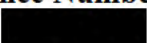







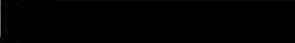

DAGGETT SOLAR POWER 3 LLC,

By: _____

Its: _____

Date: _____

EXHIBIT N**NOTICES**

DAGGETT SOLAR POWER 3 LLC (“Seller”)	MARIN CLEAN ENERGY, a California joint powers authority (“Buyer”)
All Notices: 	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Reference Numbers: Duns: N/A Federal Tax ID Number: 	Reference Numbers: Duns:  Federal Tax ID Number: 
Invoices: Attn:  	Invoices: Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn:  	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn:  	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn:  	Payments: Attn: Power Settlement Analyst Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org

DAGGETT SOLAR POWER 3 LLC (“Seller”)	MARIN CLEAN ENERGY, a California joint powers authority (“Buyer”)
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
With additional Notices of an Event of Default to: Attn: [REDACTED] [REDACTED] [REDACTED]	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: [REDACTED] [REDACTED] [REDACTED]	Emergency Contact: Attn: Phone: Facsimile: Email:

EXHIBIT O

STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY MEASUREMENTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) 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 Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) 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 five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall have the right to schedule and complete a Storage Capacity Test. In addition, Seller shall have the right to schedule and complete a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Buyer if Seller provides data with such Notice reasonably indicating that the Storage Capacity or Actual Round-Trip Efficiency has varied materially from the results of the most recent Storage Capacity Test.

C. Test Results and Re-Setting of Storage Contract Capacity. In accordance with Section 4.9(c) of the Agreement and Part II I. below, the actual capacity determined pursuant to the most recent Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 2.7 and Exhibit B) shall become the new Storage Contract Capacity, effective as of the first day of the month following the completion of the test, for calculating the monthly payment for the Storage Product and all other purposes under this Agreement.

Storage Capacity Test and Round-Trip Efficiency Measurement 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 and the provisions of this Exhibit O. 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).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY TESTS.

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

- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity; and
- Amount of energy required to go from 0% Stored Energy Level to the Maximum Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

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

- (1) Time;
- (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
- (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
- (4) Stored Energy Level (MWh).

C. 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) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Storage Facility:

- (1) successfully started;
- (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity (as defined in Exhibit A);
- (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity (as defined in Exhibit A);
- (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A);
- (5) is able to deliver Discharging Energy as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity; and
- (6) has an Actual Round-Trip Efficiency of at least the Minimum Round-Trip Efficiency, as measured at the Storage Facility Metering Point associated with Charging Energy, provided that if the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, the Round-Trip Efficiency Factor shall be subject to adjustment in accordance with the definition thereof until the next SCT completed in accordance with the terms of this Agreement.

E. Test Conditions.

- (i) General. At all times during a SCT, the Storage 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 (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F 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 Storage Contract Capacity, charging capacity, discharging capacity, Actual Round-Trip Efficiency, 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.F.

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) a 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 Storage Contract Capacity. The total amount of discharged energy delivered to the Storage Facility Meter (expressed in MWh AC) during each of the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC,

and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.

- J. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Storage Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Contract Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Contract Capacity for all purposes of this Agreement, including compensation under Exhibit C.

PART III - INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. **Initial Supplementary Storage Capacity Test Protocol**

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Capacity Test Protocol in accordance with Part II.H above and is included for the convenience of the Parties.

- Procedure:
 - (1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Storage Level.
 - (2) Record the initial value of the Storage Facility State-of-Charge ("SOC").
 - (3) Charge the Storage Facility at the maximum charging level until the battery reaches the maximum SOC allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.
 - (4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter at the Storage Facility Metering Point associated with Charging Energy ("Energy In").
 - (5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Storage Level, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

- (6) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter. Such data point shall be used for purposes of calculation the Storage Capacity.
- (7) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Actual Round-Trip Efficiency.
- (8) If the Storage Facility has not reached the Minimum Storage Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Storage Level.
- (9) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Metering Points. “**Energy Out**” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Storage Level pursuant to either Part III.A.5 or Part III.A.8, as applicable.

- Test Results

- (1) The resulting Actual Round-Trip Efficiency is calculated as Energy Out/Energy In.
- (2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Facility Meter divided by four (4) hours.

EXHIBIT P**STORAGE AVAILABILITY****Monthly Storage Availability**

(a) 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 Storage Facility was unavailable to deliver Storage Product (as such unavailability is pro rated for any Storage Contract Capacity that is available to deliver Storage Product at any given time) for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, System Emergencies, limitations contained in the Operating Restrictions set forth in Exhibit Q, a Storage Capacity Test or measurement of the Actual Round-Trip Efficiency, in each case, performed at Buyer’s request, or a Planned Outage of the Storage Facility not to exceed 168 hours in any given Contract Year. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

If the Storage 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 Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage 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 Storage 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 Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage 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 70%, then:

$$AA = 100\% - ((\blacksquare\% - \text{Monthly Storage Availability}) \times 2)$$

- (iii) If the Monthly Storage Availability is less than 70%, then:

$$AA = 0$$

EXHIBIT Q**OPERATING RESTRICTIONS**

Maximum Storage Level:	220 MWh
Minimum Storage Level:	0 MWh
Maximum Charging Capacity:	55 MW
Minimum Charging Capacity:	0.01 MW
Maximum Discharging Capacity:	55 MW
Minimum Discharging Capacity:	0.01 MW
Maximum State of Charge (SOC) during Charging:	100 %
Minimum State of Charge (SOC) during Discharging:	0 %
Ramp Rate:	■ MW/minute, as may be reasonably adjusted by Seller to the extent the Storage Contract Capacity is adjusted pursuant to Section 2.7.
Annual Cycles:	Maximum of 365 Full Cycle Equivalents per Contract Year with no monthly cap.
Daily Dispatch Limits:	Charging: ■ per day Discharging: ■ per day Partial Charging/Discharging: ■ ■
Maximum Time at Minimum Storage Level:	N/A
Other Operating Limits:	<ol style="list-style-type: none"> 1. Storage Facility to be charged only from the Generating Facility. 2. All manual dispatch commands by the Buyer or Buyer's SC must use the supplied energy management system. 3. The average resting state of charge per Contract Year must be below ■ (%). 4. Up to ■ hours of idle time is required following a continuous discharge of greater than ■ % of the Storage Capacity (as measured in MWh).

Seller and Buyer agree that Charging Notices and Discharging Notices shall be deemed modified to the extent necessary to comply with the Operating Restrictions.

The following capitalized terms have the meanings ascribed to them below in this Exhibit Q:

“Full Cycle” means the Storage Facility is charged, then discharged at a MWh quantity equal to the energy capacity in MWh. For example, SOC starts at 1%, the Storage Facility is charged to 100% and then discharged to 1%.

“Full Cycle Equivalent” means Partial Cycles that aggregate to one Full Cycle. For example, two 50 percent (50%) Partial Cycles or four 25 percent (25%) Partial Cycles is one (1) Full Cycle Equivalent.

“Partial Cycle” means the Storage Facility is charged and discharged at a MWh quantity less than 100 percent (100%) of the Storage Facility energy capacity. For example, SOC starts at 50%, the Storage Facility is discharged to 0% and then charged back to 50%.

EXHIBIT R
RESERVED

EXHIBIT S

DIVERSITY REPORTING

6/29/2020

MCE Supplier Diversity Questionnaire

MCE Supplier Diversity Questionnaire

The questions below relate to Labor Diversity. 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.

* Required

1. Email address *

2. Business Name *

3. Contact information *

Name and phone number (i.e. John Smith 888-888-8888)

4. Where is your business located/headquartered? *

6/29/2020

MCE Supplier Diversity Questionnaire

5. 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 procure at least 21.5% of their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com

Mark only one oval.

☐ Yes☐ No☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

6. If you answered yes, under which categories? Please choose all that apply.

Check all that apply.

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

7. If a minority-owned business enterprise, certified as which of the following?

Mark only one oval.

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

6/29/2020

MCE Supplier Diversity Questionnaire

8. If certified, revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

9. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

10. Does your business use subcontractors that are certified under GO 156? *

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

6/29/2020

MCE Supplier Diversity Questionnaire

11. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services.

Check all that apply.

Column 1
Row 1

12. In your recent contract with MCE does your business use and/or plan to use GO 156 certified businesses? *

Mark only one oval.

☐ Yes

☐ No

☐ Not applicable

13. Does your business have hiring targets of minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors? *

Mark only one oval.

☐ Yes

☐ No

☐ Not applicable

6/29/2020

MCE Supplier Diversity Questionnaire

14. If you answered yes to the previous question, please describe those hiring targets below.

15. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you're unsure, click the orange button reading "Look up Commodity Codes" here:
<https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

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.

Labor
Agreements

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

6/29/2020

MCE Supplier Diversity Questionnaire

16. Does your business have a history of using 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 cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

Mark only one oval.

- ☐ Yes
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ No
- ☐ Not applicable

17. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

18. If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?

6/29/2020

MCE Supplier Diversity Questionnaire

19. In your recent contract with MCE does your business use and/or plan to use local-hires, union labor, or multi-trade project labor agreements? *

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

20. If you answered yes to the previous question, please quantify the number of such labor agreements and explain.

21. 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

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

6/29/2020

MCE Supplier Diversity Questionnaire

22. In your recent contract with MCE does your business pay and/or plan to pay prevailing wages or the equivalent? *

To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html

Mark only one oval.

- ☐ Yes
☐ No
☐ Not applicable

23. Does your business support and/or use apprenticeship programs? *

Mark only one oval.

- ☐ Yes
☐ No
☐ Not applicable

24. If you answered yes to the previous question, please describe the apprenticeship programs supported/used.

6/29/2020

MCE Supplier Diversity Questionnaire

25. In your recent contract with MCE does your business use and/or plan to use apprenticeship programs? *

Mark only one oval.

- ☐ Yes
☐ No
☐ Not applicable

26. If you answered yes to the previous question, please describe the apprenticeship programs your business plans to use.

27. Does your business employ workers and/or use businesses from MCE's service area? *

MCE service area includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, and the unincorporated Contra Costa County.

Mark only one oval.

- ☐ Yes
☐ No

6/29/2020

MCE Supplier Diversity Questionnaire

28. If you answered yes to the previous question, please quantify the number of workers/businesses, the businesses used, and in which communities the workers or business reside.

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.

Equity, Diversity,
Inclusion, and Justice

MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

29. Does your business have initiatives to promote workplace diversity? *

Mark only one oval.

☐ Yes

☐ No

30. If you answered yes to the previous question, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business.

6/29/2020

MCE Supplier Diversity Questionnaire

31. What other efforts related to equity, diversity, inclusion, or justice does your business pursue?

32. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below:

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.

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Google Forms


EXHIBIT T

METERING

Seller may add meters or move meters to different locations based on final design of the Facility so long as the Storage Facility is AC coupled, the metering provisions of this Agreement and the Interconnection Agreement can be complied with, such changes are consistent with the requirements of the CAISO Tariff, including the ability of the Facility to maintain a separate CAISO resource IDs for the Generating Facility and the Storage Facility, and such metering changes do not affect the measurement or calculation of PV Energy, Facility Energy, Charging Energy, Discharging Energy, Electrical Losses and Station Use as required under this Agreement. Subject to the foregoing requirements, any such changes shall not be deemed to be inconsistent with this Exhibit T.


EXHIBIT U

POLLINATOR SCORECARD



Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility. Only for use in countries and/or states that have not yet adopted a standard.



1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY WILDFLOWERS

<input type="checkbox"/> 31-45 %	+5 points
<input type="checkbox"/> 46-60 %	+10 points
<input type="checkbox"/> 61+ %	+15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

<input type="checkbox"/> 26-50%	+5 points
<input type="checkbox"/> 51-75%.	+10 points
<input type="checkbox"/> 76-100%	+15 points

Total points

3. PLANNED COVER DIVERSITY (# of species in seed mixes; numbers from upland and wetland mixes can be combined)

<input type="checkbox"/> 10-19 species	+5 points
<input type="checkbox"/> 20-25 species	+10 points
<input type="checkbox"/> 26 or more species	+15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check/add all that apply)

<input type="checkbox"/> Spring (April-May)	+5 points
<input type="checkbox"/> Summer (June-August)	+5 points
<input type="checkbox"/> Fall (September-October)	+5 points
<input type="checkbox"/> Winter (November-March)	+5 points

Total points

Note: Check local resources for data on bloom seasons

5. AVAILABLE HABITAT COMPONENTS WITHIN .25 MILES (check/add all that apply)

<input type="checkbox"/> Native bunch grasses for nesting	+2 points
<input type="checkbox"/> Native trees/shrubs for nesting	+2 points
<input type="checkbox"/> Clean, perennial water sources	+2 points
<input type="checkbox"/> Created nesting feature/s (bee blocks, etc.)	+2 points

Total points

6. SITE PLANNING AND MANAGEMENT

<input type="checkbox"/> Detailed establishment and management plan developed with funding/contract to implement	+15 points
<input type="checkbox"/> Signage legible at 40 or more feet stating "pollinator friendly solar habitat" (at least 1 every 20ac.)	+5 points

Total points

7. SEED MIXES

<input type="checkbox"/> Mixes are composed of at least 40 seeds per square foot	+5 points
<input type="checkbox"/> All seed genetic origin within 175 miles of site	+5 points
<input type="checkbox"/> At least 2% milkweed cover to be established from seed/plants	+10 points

Total points

8. INSECTICIDE RISK

<input type="checkbox"/> Planned on-site insecticide use or pre-planting seed/plant treatment (excluding buildings/ electrical boxes, etc.)	-40 points
<input type="checkbox"/> Perpetual bare ground under the panels as a result of pre and post emergent herbicide.	-40 points
<input type="checkbox"/> Communication/registration with local chemical applicators about need to prevent drift from adjacent areas.	+10 points

Total points

9. OUTREACH/EDUCATION

<input type="checkbox"/> Site is part of a study with a college, university, or research lab.	+5 points
---	-----------

Grand total

Provides Exceptional Habitat >85

Meets Pollinator Standards 70-84

Project Name: _____

Vegetation Consultant: _____

Project Location: _____

Total acres (array and open area): _____

Projected Seeding Date: _____

Note: Percent "cover" should be based on "absolute cover" (the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above). To measure cover diversity use plots, and/or transects in addition to meander searches. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.




EXHIBIT V FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among Daggett Solar Power 3 LLC, a Delaware limited liability company (“**PPA Seller**”), Marin Clean Energy, a California joint powers authority (“**PPA Buyer**”), and [Limited Assignee], a [] (“**Limited Assignee**”), and relates to that certain Renewable Power Purchase Agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Limited Assignee (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[NOTE: Appendix 1 to provide for transfer of RECs]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Limited Assignee the obligation to pay for all Assigned Products that are actually delivered to Limited Assignee pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Limited Assignee fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) Limited Assignee hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (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) PPA Buyer and PPA Seller will provide to Limited Assignee copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA

Buyer is hereby authorized by Limited Assignee to and shall act as Limited Assignee's agent with regard to scheduling Assigned Product.

- (e) PPA Seller acknowledges that (i) Limited Assignee intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Limited Assignee has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Limited Assignee purchases any such receivables due from PPA Buyer, Limited Assignee may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
 - (1) delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day (as defined in the PPA) following receipt by Limited Assignee of written notice thereof;
 - (3) delivery of a written notice by PPA Seller if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to Limited Assignee (or any entity providing a parent guaranty on behalf of Limited Assignee); or
 - (4) delivery of a written notice by Limited Assignee if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.
- (c) All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant

to Limited Assignee that (a) the PPA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Limited Assignee of any updates to such notice information. Notices to Limited Assignee shall be provided to the following address, as such address may be updated by Limited Assignee from time to time by notice to the other Parties:

[Limited Assignee]

5. Miscellaneous. Sections 19.2, 19.4, 19.5, and 19.7 of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. 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 New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.
- (b) Jurisdiction. Each party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco.
- (c) Waiver of Right to Trial by Jury. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

DAGGETT SOLAR POWER 3 LLC

MARIN CLEAN ENERGY

By:
Name:
Title:

By:
Name:
Title:

[LIMITED ASSIGNEE]

By:
Name:
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:
Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [____], 2020, by and between Marin Clean Energy and Daggett Solar Power 3 LLC.

“Assignment Period” means the period beginning on [____] and extending until [____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA. *[The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA.]*

Assigned Product: [Describe and define]

Further Information: [Include, if any] *[To include transfer and settlement mechanics for RECs, as applicable.]*



Daggett Solar Power 3, LLC PPA Proposal

MCE Technical Committee – September 3, 2020

Open Season 2020 Overview

Goals

- Renewable Energy: 350,000 Megawatt hours (MWh)/year
- Commercial Operation Date (COD): 2023
- Capacity: 18 MW minimum

Product Type

- Product Content Category 1 energy
- Paired or stand-alone energy storage

Timeline

- Launched: January 3rd
- Offers due: March 2nd
- Results presented to Ad Hoc Contracts Committee: May 13th
- Exclusivity agreement executed with #1 rated project: May 15th
- Contract negotiations/internal review: June - July
- Technical Committee presentation: September 3rd

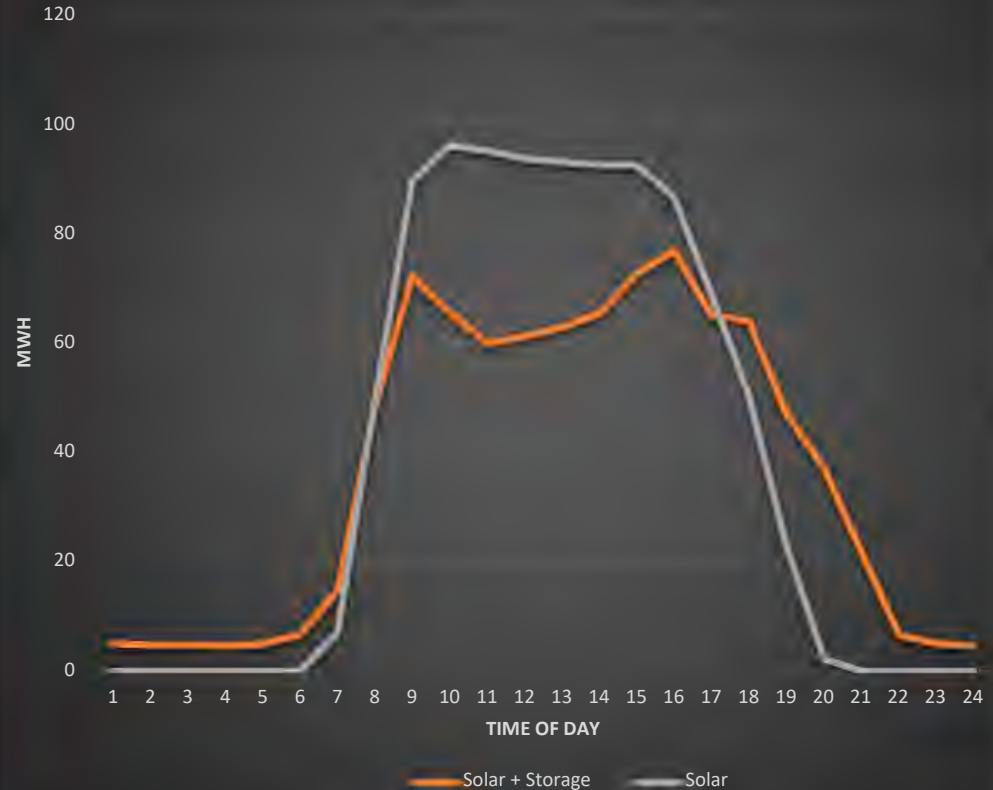
Summary of Offers

- **55 Unique projects / 128 Total variants**
 - Solar + Storage
 - Wind
 - Geothermal
 - Stand-Alone Storage
- **Conclusion:**
 - The top-10 rated projects were all solar + storage
 - Daggett Solar Power 3, LLC was rated #1

Optimize Performance with Energy Storage

- Charge when demand or prices are low
- Discharge when demand or prices are high

Illustrative Annual Delivery Profile
Solar + Storage vs Solar Only



Overview: Daggett Solar Power 3, LLC

- 110 MW Solar
- 55 MW/220 MWh L-ion Battery
- San Bernardino County, CA
- Best combination of economics and project viability
- Developer has a strong track record of successful projects

5



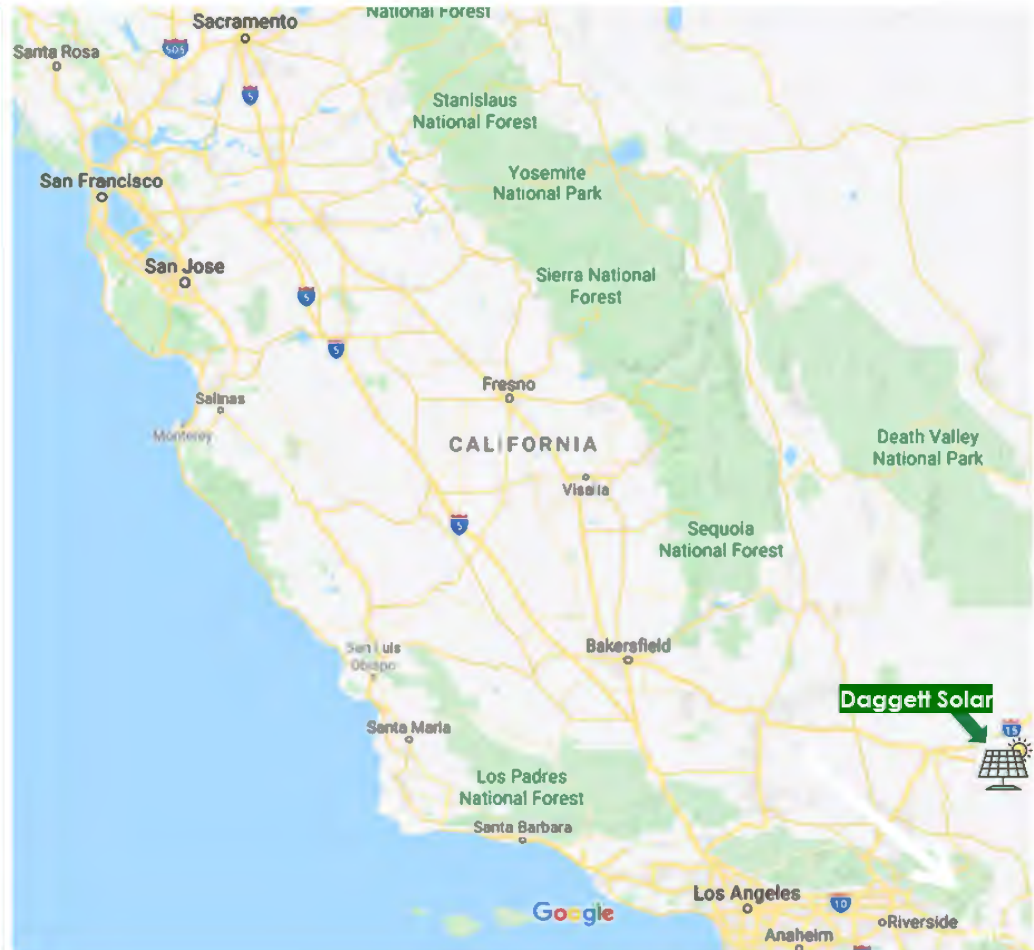
Overview: Clearway Energy Group

- Headquartered in San Francisco / 600 employees
- Comprehensive and integrated services
 - Project Origination and Development
 - Construction Management
 - Project Finance
 - Long-term Asset Operations & Management
- Portfolio - 4.7 Gigawatts of wind, solar and energy storage projects
- Parent Company - Global Infrastructure Partners (GIP)
 - One of the world's largest infrastructure investors with assets in the energy, transportation, water and waste management sectors
 - \$69 billion in assets

Daggett Solar & Storage Project

- 342,000 MWhs / Year
 - ~ 57,000 residential customers
- On-line date: 12/31/2022
- 15 year term
- Full control of Battery
 - Energy arbitrage
 - Ancillary Services
 - Resource Adequacy
- No credit/collateral obligations for MCE

7



Unique Terms & Conditions

- Financial incentives for battery performance
- Union labor requirement
- Pollinator friendly habitat requirement
- \$14.8MM security deposit to ensure milestones are met
- Control over certain assignment rights
- 85% energy output guarantee

MCE Open Position – Renewable Energy

Renewables Open Position (GWh)

	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>2033</u>	<u>2034</u>	<u>2035</u>
Portfolio Content Category 1	1,154	1,194	1,524	1,895	2,214	2,440	2,648	2,695	2,869	2,905	3,245	3,359	3,388

The 342 GWh/year expected annual generation from the Daggett project would help MCE meet its future Renewable Energy targets by reducing open positions that currently exist in 2023 and beyond.

The output from this facility would reduce the projected open position by 30%

Recommendation

Approve PPA between MCE and Daggett Solar Power 3, LLC, which would:

- Be developed by an experienced team
- Support MCE's future renewable and reliability goals
- Provide competitively-priced renewable energy, clean resource adequacy and ancillary services
- Contribute valuable resource and delivery profile diversity to MCE's portfolio

Thank You

David Potovsky
Senior Power Procurement Manager
dpotovsky@mceCleanEnergy.org

