

Board of Directors Meeting
Thursday, July 21, 2022
7:00 P.M.

This Meeting will be conducted via teleconference pursuant to the requirements of [Assembly Bill No. 361](#). By using teleconference for this meeting, MCE continues to promote social distancing measures recommended by local officials.

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

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/82085254745?pwd=dWs0b1NTbWNYbjRJbVZLMVZzZjZrUT09>

Dial: (669) 900-9128
Webinar ID: 820 8525 4745
Meeting Passcode: 205749

Agenda Page 1 of 2

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e) (Discussion/Action)
5. Report from Chief Executive Officer (Discussion)
6. Consent Calendar (Discussion/Action)
 - C.1 Approval of 5.19.22 Meeting Minutes
 - C.2 Approved Contracts For Energy Update

7. Energy Storage Resource Adequacy Agreement with Hecate Grid Humidor Storage 185 LLC (Discussion/Action)
8. MCE Policy 018-Ticket and Pass Distribution (Discussion/Action)
9. Because of Youth Campaign Update (Discussion)
10. Overview of MCE's Marketplace Load-Modifying Programs (Discussion)
11. Board Matters & Staff Matters (Discussion)
12. Adjourn

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

DISABLED ACCOMMODATION: If you are a person with 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.



July 21, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e) (Agenda Item #04)

ATTACHMENT: Proposed Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e)

Dear Board Members:

Summary:

Assembly Bill (AB) No. 361 (Rivas), signed by Governor Gavin Newsom on September 16, 2021, amends the Brown Act¹ to allow a local agency to continue using teleconferencing during a state-proclaimed state of emergency without meeting certain Brown Act teleconference requirements.

On July 1, 2022, the MCE Executive Committee, by Resolution 2022-08, made a finding that the Governor designated a state of emergency and that the state of emergency continued to directly impact the ability of board members to meet safely in person. This finding allowed for meetings to be held via teleconference. This finding should be reconsidered every 30 days, pursuant to AB 361.

To continue holding teleconference meetings for the next 30 days, the MCE Board of Directors must make the following findings by majority vote:

¹ Gov. Code, §§ 54950 et seq.

1. The Board of Directors has reconsidered the circumstances of the state of emergency, as designated by the Governor.
2. The Board of Directors finds that one or both of the following circumstances still exists:
 - a. The state of emergency continues to directly impact the ability of members to meet safely in person; or
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

Staff recommends adopting proposed Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e), which makes the required AB 361 findings for continuing remote teleconference meetings for the next 30 days.

Fiscal Impacts: None.

Recommendation:

Adopt proposed Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e).

RESOLUTION NO. 2022-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS FOR THE BOARD OF DIRECTORS AND EVERY COMMITTEE OF THE BOARD OF DIRECTORS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Fairfield, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, MCE is subject to various provisions of the California Government Code; and

WHEREAS, Government Code section 54953, as amended by Assembly Bill No. 361, allows legislative bodies to hold open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3), so long as the legislative body complies with certain requirements set forth in Government Code section 54953(e), finding there exists a declared state of emergency, and one of the following circumstances is met:

1. State or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body is holding the meeting for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body has determined, by majority vote, pursuant to option 2, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

WHEREAS, the Governor of California proclaimed a state of emergency pursuant to Government Code section 8625 on March 4, 2020; and

WHEREAS, the MCE Executive Committee previously adopted Resolution No. 2022-08 finding that the requisite conditions continue to exist for the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee to conduct teleconference meetings under California Government Code section 54953(e); and

WHEREAS, Government Code section 54953(e)(3) requires the legislative body adopt certain findings every 30 days by majority vote to continue holding open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3); and

WHEREAS, the MCE Board of Directors desires to continue to hold the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee public meetings by teleconference consistent with Government Code section 54953(e).

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
- B. The MCE Board of Directors hereby finds and declares the following, as required by Government Code section 54953(e)(3):
 1. The Governor of California proclaimed a state of emergency on March 4, 2020, pursuant to Government Code section 8625, which remains in effect.
 2. State or local officials have imposed or recommended measures to promote social distancing.
 3. The legislative body has determined that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 21st day of July 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				

City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

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MCE BOARD MEETING MINUTES

Thursday, May 19, 2022

7:00 P.M.

This Meeting was conducted pursuant to the requirements of [Assembly Bill No. 361](#) (September 16, 2021) which allows a public agency to use teleconferencing during a Governor-proclaimed state of emergency without meeting usual [Ralph M. Brown Act](#) teleconference requirements. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

Present: Bruce Ackerman, Town of Fairfax
Denise Athas, City of Novato
Edi Birsan, City of Concord
Tom Butt, City of Richmond, Chair
Cindy Darling, City of Walnut Creek
Gina Dawson, City of Lafayette
David Fong, Town of Danville
Maika Llorens Gulati, City of San Rafael
Kevin Haroff, City of Larkspur
Aaron Meadows, City of Oakley
Leila Mongan, Town of Corte Madera
Devin Murphy, City of Pinole
Teresa Onoda, Town of Moraga
Patricia Ponce, City of San Pablo
Scott Perkins, City of San Ramon
Matt Rinn, City of Pleasant Hill
Katie Rice, County of Marin
Shanelle Scales-Preston, City of Pittsburg
Gabriel Quinto, City of El Cerrito
Brad Wagenknecht, County of Napa
Brianne Zorn, City of Martinez

Absent: John Gioia, Contra Costa County
Ford Greene, Town of San Anselmo
Janelle Kellman, City of Sausalito
C. William Kircher, Town of Ross
Katy Miessner, City of Vallejo
Doriss Panduro, City of Fairfield
John Vasquez, County of Solano
Sally Wilkinson, City of Belvedere and City of Mill Valley

**Staff
& Others:** Jesica Brooks, Assistant Board Clerk

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Darlene Jackson, Board Clerk
Vicken Kasarjian, Chief Operating Officer
Stephanie Chen, Senior Policy Counsel
Evelyn Reyes, Internal Operations Coordinator
Daniel Settlemyer, Internal Operations Coordinator
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Butt called the regular meeting to order at 7:03 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

Comments were made by Directors Onoda and Murphy.

3. Public Open Time (Discussion)

Chair Butt opened up public open time and there were no comments.

4. Resolution No. 2022-07 Authorizing Remote Teleconference Meeting for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e) (Discussion/Action)

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

Action: It was M/S/C (Haroff/Birsan) adopt proposed Resolution No. 2022-07 Authorizing Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e). Motion carried by unanimous roll call vote. (Absent: Directors Dawson, Gioia, Greene, Kellman, Kircher, Miessner, Panduro, Vasquez, Wagenknecht, and Wilkinson).

5. Report from Chief Executive Officer (Discussion)

CEO, Dawn Weisz, reported the following:

- A live Legislative Advocacy map was made available on the screen during the presentation along with instructions on how to register and view real time results as they popup on the live map. Several board members registered in real time and were able to see live results.
- MCE is hosting its annual [Certify and Amplify Webinar](#) on Tuesday, June 14th at noon online. We will show business owners how certification is free, easy, and can help build their portfolio of work. Please share with your networks! The event will have live interpretation in [Spanish](#).
- A huge thank you for all the advocacy on SB 881 in the last two weeks.

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- Power Resources will soon be finalizing a 4-year transaction for large hydroelectric and Asset Controlling Supply energy
- Energy Efficiency results for 2021 include: 6.32 GWh electric savings (up 222% over 2020), 338,000 Therms gas savings (up 363% over 2020), and the equity segment achieved 206% of its electricity saving goals.
- Electric Vehicles:
 - Gearing up to expand the MCE Sync pilot with the goal of 4,000 customers enrolled by March 2023.
 - MCE Sync was accepted as a presentation at Roadmap, the leading national EV conference. Brett Wiley will be presenting with our partner EV.Energy.
 - CEC awarded REACH (Reliable, Equitable, Accessible Charging for multifamily Housing) grants to two electric vehicle projects that MCE partnered on. The work will begin later this year.
 - A partnership between BAAQMD, Grid Alternatives and MCE will result in 40 Level 1 ports, 62 Level 2 ports, and 3 Fast Charging ports at Multifamily sites, mainly in Richmond, San Pablo, and Vallejo. At least 50% low-income serving.
- Regulatory & Legislative Policy:
 - More will be shared later in the meeting concerning MCE's successful DC trip. A huge thank you to Directors Murphy and Quinto for accompanying staff and contributing to these very important meetings.

6. Consent Calendar (Discussion/Action)

- C.1 Approval of 3.17.22 Meeting Minutes
- C.2 Approved Contracts For Energy Update
- C.3 Second Agreement with EV.Energy Corp.

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

Action: It was M/S/C (Wagenknecht/Rinn) to **approve Consent Calendar items C.1-C.3**. Motion was carried by roll call vote. (Abstained on C.1: Directors Ackerman, Ponce, and Zorn) (Absent: Directors Dawson, Gioia, Greene, Kellman, Kircher, Miessner, Panduro, Vasquez, and Wilkinson).

7. Spare the Air Leadership Award Presentation (Discussion)

Director Rice, introduced this item and addressed questions from Board members.

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

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Action: No action required.

8. Update on MCE Trip to Washington DC (Discussion)

Stephanie Chen, Senior Policy Counsel, introduced this item and addressed questions from Board members.

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

Action: No action required.

11. Board Matters & Staff Matters (Discussion)

Comments were made by Chair Butt and Alternate Director Ackerman.

12. Adjournment

Chair Butt adjourned the meeting at 7:44 p.m. to the next scheduled Board Meeting on June 16, 2022.

Tom Butt, Chair

Attest:

Dawn Weisz, Secretary



July 21, 2022

TO: MCE Board of Directors

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Approved Contracts for Energy Update (Agenda Item #06 C.2)

Dear Board Members:

SUMMARY: This report summarizes contracts for energy procurement entered into by the Chief Executive Officer and if applicable, the Chair of the Technical Committee since the last regular Board meeting in May. This summary is provided to your Board for information purposes only, and no action is needed.

Review of Procurement Authorities

In March 2018, your Board adopted Resolution 2018-03 which included the following provisions:

The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.

The CEO is authorized to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors.

The Chief Executive Officer is required to report all such contracts and agreements to the MCE Board of Directors on a regular basis.

<i>Item Number</i>	<i>Month of Execution</i>	<i>Purpose</i>	<i>Average Annual Contract Amount</i>	<i>Contract Term</i>
1	May, 2022	Purchase of Resource Adequacy	\$323	Under 1 Year
2	May, 2022	Sale of Renewable Energy	\$356,296	1-5 Years
3	May, 2022	Sale of Resource Adequacy	\$65,000	Under 1 Year
4	May, 2022	Sale of Resource Adequacy	\$74,726	Under 1 Year
5	May, 2022	Sale of Resource Adequacy	\$11,250	Under 1 Year
6	May, 2022	Sale of Resource Adequacy	\$240,000	Under 1 Year
7	May, 2022	Sale of Resource Adequacy	\$216,000	Under 1 Year
8	May, 2022	Sale of Renewable Energy	Up To \$2,150,000	Under 1 Year
9	May, 2022	Sale of Resource Adequacy	\$420,000	Under 1 Year
10	May, 2022	Sale of Resource Adequacy	\$350,000	Under 1 Year
11	May, 2022	Purchase of Carbon Free Energy	\$1,266,805	1-5 Years
12	May, 2022	Sale of Resource Adequacy	\$60,700	Under 1 Year
13	May, 2022	Purchase of Resource Adequacy	\$6,300,000	1-5 Years
14	May, 2022	Purchase of Resource Adequacy	\$140,000	Under 1 Year
15	June, 2022	Purchase of Resource Adequacy	\$6,015,000	Under 1 Year
16	June, 2022	Purchase of Renewable Energy	\$956,250	Under 1 Year
17	June, 2022	Sale of Resource Adequacy	\$216,000	Under 1 Year
18	June, 2022	Sale of Resource Adequacy	\$136,000	Under 1 Year

Contract Approval Process: Energy procurement is governed by MCE's Energy Risk Management Policy as well as Board Resolutions 2018-03, 2018-04, and 2018-08. The Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to its procurement policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. The Board Resolutions direct the CEO to sign energy contracts up to and including 12 months in length.

The evaluation of every new energy contract is based upon how to best fill MCE's open position. Factors such as volume, notional value, type of product, price, term, collateral threshold and posting, and payment are all considered before execution of the agreement.

After evaluation and prior to finalizing any energy contract for execution, an approval matrix is implemented whereby the draft contract is routed to key support staff and consultants for review, input, and approval. Typically, contracts are routed for commercial, technical, legal and financial approval, and are then typically routed through the Chief Operating Officer for approval prior to execution. The table below is an example of MCE staff and consultants who may be assigned to review and consider approval prior to the execution of a new energy contract or agreement.

<i>Review Owner</i>	<i>Review Category</i>
Lindsay Saxby (MCE Director of Power Resources)	Procurement / Commercial
John Dalessi/Brian Goldstein (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Garth Salisbury (MCE Director of Finance)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts: Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2022/23 are within the FY 2022/23 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



July 21, 2022

TO: MCE Board of Directors

FROM: David Potovsky, Principal Power Procurement Manager

RE: Energy Storage Resource Adequacy Agreement with Hecate Grid Humidor Storage 185 LLC (Agenda Item #07)

ATTACHMENTS: A. Agreement with Hecate Grid Humidor Storage 185 LLC for Resource Adequacy
B. Presentation on Hecate Grid Humidor Storage 185 LLC Proposal

MCE Board of Directors:

Background:

MCE's Open Season 2021 procurement process had three primary goals:

1. To meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
2. Adding Resource Adequacy (RA) supply to the portfolio
3. Adding resources that would fulfill the Mid Term Reliability (MTR) obligations as outlined in the CA Public Utilities Commission (CPUC) decision D.21-06-035.

As a result of the solicitation, staff received an offer from Hecate Grid Humidor Storage 185 LLC (Humidor) for the RA capacity from a new stand-alone battery energy storage system (BESS). The proposed facility would be one of five contracts, that when combined, would satisfy the aforementioned MTR obligation. MCE's Technical Committee approved the first of the five contracts (Golden Fields) in February, 2022. Humidor would be the second. Staff is currently negotiating the terms of the additional contracts, and will present them to the Technical Committee in September.

Summary:

The Humidor project is being developed by Hecate Grid, and is sited in Los Angeles County. The project is at a mature stage in the development process with an executed interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

Staff negotiated the attached draft Energy Storage Resource Adequacy Agreement (ESA) for the purchase of RA capacity from the Humidor project. The installation will have a contractually guaranteed nameplate capacity of 185 MW with a discharge duration of 4 hours. The contract offers a substantial volume of RA at a price that is competitive within the current market. The project is well positioned for success, and Hecate Grid has experience successfully developing both solar and storage facilities.

Rationale:

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

- RA capacity produced by the facility would complement MCE's existing portfolio of resources.
- The project type, size, specifications and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order.
- The project is being developed and will be operated by an experienced team, which is currently supplying RA to other Load Serving Entities including Southern California Edison and Clean Power Alliance.
- The project is highly viable, with most major pre-construction milestones in completed.

Additional Information:

Hecate Grid

- Headquartered in Chicago, IL / 60 employees.
- Jointly owned platform of Hecate Energy and InfraRed Capital that develops, owns, finances, and operates utility scale energy storage projects in North America and Europe.
- InfraRed Capital Partners is a \$10-plus billion infrastructure fund with global investments in transportation, communication, low-carbon energy generation and energy storage.
- 10 Gigawatts (GW) of solar and energy storage projects operating, under construction or in development. Projects are located across the US, Canada and the United Kingdom.

Contract Overview

- Project:
 - Stand-alone battery energy storage system
 - 185 MW/4 Hour duration (740 MWh)

- Lithium-ion chemistry
- Contract will provide 185 MW of RA
- Price is fixed with no escalation for the full term
- Project location: Unincorporated Los Angeles County, California
- Guaranteed commercial operation date: April 1, 2024
- Contract term: 10 years
- Fixed price adjusted for 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: Contractors are required to enter into union project labor agreements (PLA) for all on-site construction
- Community Benefit Package: Seller pledges to contribute One Hundred Thousand Dollars (\$100,000) to community benefit initiatives that directly benefit stakeholders in MCE's service area and/or communities adjacent to the project location. MCE and seller will identify initiatives that are of mutual interest such as workforce training, environmental stewardship/habitat improvement, education and renewable energy projects

Fiscal Impacts:

There would be no impact on the Fiscal Year 2022/23 budget. Incremental costs will be accounted for starting in FY 2023/24.

Recommendation:

Authorize execution of the Energy Storage Resource Adequacy Agreement with Hecate Grid Humidor Storage 185 LLC.

Proposed Execution Version

ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT

COVER SHEET

Seller: Hecate Grid Humidor Storage 185 LLC (“**Seller**”)

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

Description of Facility: A 185 MW/740 MWh portion of the larger Humidor Storage facility, a grid-connected battery energy storage facility, located in Los Angeles County, California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	6/30/2022
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	3/31/2023
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Financial Close	4/30/2023
Expected Construction Start Date	5/31/2023
Initial Synchronization	3/15/2024
Expected Commercial Operation Date	4/01/2024

Delivery Term: Ten (10) Contract Years.

Storage Contract Capacity: 185 MW

Contract Price

The Contract Price shall be:

Contract Year	Contract Price
1-10	

Product:

- ☐ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☐ Energy Only Status
 - ☒ Full Capacity Deliverability Status and Expected FCDS Date: The RA Guarantee Date as defined herein
- ☐ Ancillary Services

Scheduling Coordinator: Seller/Seller Third-Party SC


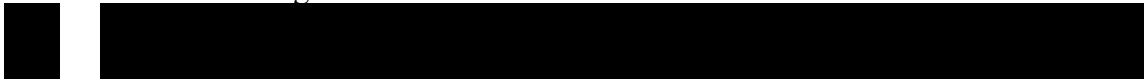
Development Security and Performance Security

Development Security: [REDACTED]

Performance Security: [REDACTED]

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Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F	Form of Commercial Operation Date Certificate
Exhibit G	Form of Installed Capacity Certificate
Exhibit H	Form of Construction Start Date Certificate
Exhibit I	Form of Letter of Credit
Exhibit J	Form of Guaranty
Exhibit K	Form of Replacement RA Notice
Exhibit L	Reserved
Exhibit M	Storage Capacity Tests
Exhibit N	Notices
Exhibit O	Operating Restrictions
Exhibit P	Reserved
Exhibit Q	Community Benefits
Exhibit R	Diversity Reporting

ENERGY STORAGE RESOURCE ADEQUACY AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.6(d).

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

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

“**Alternating Current**” or “**AC**” means alternating current.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with the terms and conditions of this Agreement, applicable Law, the Interconnection Agreement, the Operating Restrictions, and Prudent Operating Practice.

“Bankrupt” means with respect to any entity, such entity (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.

“Bridge Capacity” has the meaning set forth in Section 2(d) of Exhibit B.

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

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

“CAISO” means the California Independent System Operator Corporation.

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

“CAISO Tariff” means the California Independent System Operator Corporation Operating Agreement, 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; *provided* that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

“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 accept at or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits, but excluding the right to dispatch the Storage Capacity for the charging, discharging, or other delivery of Energy or Ancillary Services.

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

“Capacity Exclusivity Period” has the meaning set forth in Section 14.4(a).

“Capacity Exercise Period” has the meaning set forth in Section 14.4(c).

“Capacity Material Terms” has the meaning set forth in Section 14.4(b).

“Capacity ROFO Offer” has the meaning set forth in Section 14.4(b).

“Capacity Sale” has the meaning set forth in Section 14.4(a).

“Capacity Sale Agreement” has the meaning set forth in Section 14.4(b).

“CEC” means the California Energy Commission or its regulatory successor.

“CEQA” means the California Environmental Quality Act.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. For greater clarity, a Change in Law shall include (i) any change to a Resource Adequacy Ruling, including any change in the CPUC’s resource counting rules, (ii) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CPUC, and (iii) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC, including any change in the CAISO’s resource counting rules or the CAISO’s deliverability assessment methodology for storage facilities that applies to all storage facilities as a resource class.

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

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

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

“Charging Energy” means the as-available Energy delivered to the Facility for charging, as measured by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

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

“COD Certificate” has the meaning set forth in Section 2 of Exhibit B.

“COD Deadline” has the meaning set forth in Section 11.1(b)(ii).

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

“Commercial Operation” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Date” has the meaning set forth in Section 2 of Exhibit B.

“Commercial Operation Delay Damages” or **“COD Delay Damages”** means an amount equal to [REDACTED]

“Compliance Action” has the meaning set forth in Section 3.6(b).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.6(b).

“Compliance Showings” means (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings), and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

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

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

“Construction Start Date” has the meaning set forth in Section 1 of Exhibit B.

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

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

“Contract Year” means a period of twelve (12) consecutive months, with the first Contract Year beginning on the Initial Delivery Date, each succeeding Contract Year beginning on each anniversary of the Initial Delivery Date, and the last Contract Year ending at midnight at the end of the day prior to the tenth (10th) anniversary of the Initial Delivery Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, including, if Buyer is the Non-Defaulting Party, with respect to Buyer’s procurement requirements under CPUC Decision 21-06-035; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

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

“COVID-19” has the meaning set forth in Section 10.1(c).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC System RA Penalty” has the meaning set forth in the Resource Adequacy Rulings.

“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.

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

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

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

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

“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 Initial Delivery Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Section 4 of 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 Facility, net of the Electrical Losses, as measured by the Storage Facility Meter.

“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, subject to meeting any applicable CAISO requirements, losses of Energy within the Facility’s energy storage equipment along with all transmission or transformation losses (a) between the Delivery Point and the Storage Facility Meter associated

with delivery of Charging Energy and (b) between the Storage Facility Meter and the Delivery Point associated with delivery of Discharging Energy.

“**Energy**” means Alternating Current electrical energy measured in MWh.

“**Energy In**” has the meaning set forth in Part II.B of Exhibit M.

“**Energy Management Software**” has the meaning set forth in in Exhibit A.

“**Energy Out**” has the meaning set forth in Part II.B of Exhibit M.

“**Enhanced Delay Damages**” means either (a) or (b) below, as applicable:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

“**Exercise Period**” has the meaning set forth in Section 14.3(c).

“**Expansion Project**” has the meaning set forth in Section 14.5.

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

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

“**Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and

including the Energy Management Software and related storage and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement. This equipment includes transformers, batteries, fire suppression, thermal management, enclosures, and inverters.

“Facility Energy” means the Discharging Energy during any Settlement Interval or Settlement Period.

“FERC” means the Federal Energy Regulatory Commission.

“Financial Close” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

“Flexible RAR” means the flexible resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

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

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

“Future Environmental Attributes” shall mean any and all storage attributes other than Capacity Attributes and Standalone Energy Storage Incentives 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 storage or discharge 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, which also shall be retained by Seller for its sole benefit.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

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

“Guaranteed Commercial Operation Date” 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 RA Amount” is equal to [REDACTED]

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer 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, (d) has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) 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 J.

“Indemnifiable Losses” 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 Delivery Date” means the first day of the first Showing Month for which Product is delivered. The Initial Delivery Date may not occur prior to the Commercial Operation Date.

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

“Installed Capacity” means the maximum dependable operating capability of the Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit G hereto.

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

“Interconnection Agreement” means the interconnection agreement or agreements entered into by Seller (or its Affiliate) pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility on or before the Expected Commercial Operation Date that is no less than the Storage Contract Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

“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.

“Late Constructed Project” has the meaning set forth in Section 14.3(a).

“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, or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or 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 I.

“Licensed Professional Engineer” means a professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local RAR**” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“**Losses**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (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 transaction(s) replacing this Agreement. Factors used in determining economic loss 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 must include the value of Capacity Attributes.

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

“**Material Terms**” has the meaning set forth in Section 14.3(b).

“**Meter Service Agreement**” has the meaning set forth in the CAISO Tariff.

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

“**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.

“**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 electronic mail (email).

“**Notice of Claim**” has the meaning set forth in Section 16.2(a).

“Notification Deadline” has the meaning set forth in Section 3.5.

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

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

“Outside Commercial Operation Date” has the meaning set forth in Section 11.1(b)(ii).

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

“Permitted Transferee” means:

- (a) any Affiliate of Seller; or
- (b) any entity that has, or is controlled by another Person that has:
 - (i) 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, BBB- from Fitch, or Baa3 from Moody’s; and
 - (ii) At least three (3) years of experience in the ownership and operations of power generation facilities, or at least two (2) years of experience in the ownership and operations of energy storage systems 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.

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

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4.

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

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

“Project ESA” has the meaning set forth in Section 14.3(b).

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, 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 includes acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale stand-alone 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.

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

“RA Deficiency Amount” has the meaning set forth in Section 3.5(b).

“RA Guarantee Date” means [REDACTED]

“RA Shortfall” has the meaning set forth in Section 3.5(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any Showing Month during which there is an RA Shortfall.

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

“Receiving Party” has the meaning set forth in Section 18.2.

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

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, *provided* such Resource Adequacy Benefits comply with all applicable requirements of CPUC Decision 21-06-035.

“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 any flex attributes.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements established for Buyer pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

“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, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-02-022, 19-06-026, 19-10-021, 20-06-002, 20-06-028, 20-06-31, 20-12-006, 21-06-035, including the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load-serving entities to demonstrate compliance with the CPUC’s resource adequacy program, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC, 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.

“Right of First Offer” or **“ROFO”** has the meaning set forth in Section 14.3(a).

“ROFO Offer” has the meaning set forth in Section 14.3(b).

“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”** has a corollary meaning.

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

“Security Interest” has the meaning set forth in Section 8.9.

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

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary

to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Shared Facilities Agreements” has the meaning set forth in Section 6.3.

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

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

“Site Control” means that, commencing on the date specified in the Cover Sheet and continuing for the Contract Term, Seller (or its Affiliate pursuant to a sharing arrangement allowed by this Agreement): (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.

“Standalone Energy Storage Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction or ownership from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (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 Future Environmental Attribute.

“Station Use” means Energy (including produced or discharged by the Facility) that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging.

“Storage Capacity” means (a) the maximum dependable operating capability of the Facility to discharge Energy that can be sustained for four (4) consecutive hours, as the same may be adjusted from time to time pursuant to Section 4.3 and Exhibit M to reflect the results of the most recently performed Storage Capacity Test, and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to discharge Energy. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Capacity in excess of the Storage Contract Capacity; *provided*, for all purposes of this Agreement the amount of Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and Buyer shall have no obligation to pay for such excess capacity.

“Storage Capacity Test” means any test or retest of the capacity of the Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.3 and Exhibit M.

“Storage Contract Capacity” or **“Contract Capacity”** means the total capacity (in MW) of the Facility initially equal to the amount set forth on the Cover Sheet.

“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. For clarity, the Facility will contain multiple measurement devices, including the CAISO Approved Meter, 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.

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

“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.

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

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

“Third-Party Capacity Transaction” has the meaning set forth in Section 14.4(a).

“Third-Party Transaction” has the meaning set forth in Section 14.3(c).

“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 [REDACTED]

“Workforce Requirements” has the meaning set forth in Section 13.4.

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 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 such document, agreement or 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*, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

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

2.2 Conditions Precedent. Commercial Operation shall not occur until Seller completes each of the following conditions:

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

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

(c) An Interconnection Agreement between Seller (or its Affiliate or a third party transmission entity, if a sharing arrangement permitted by this Agreement is in effect) 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 required for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (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, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller (or its Affiliate, if a sharing arrangement permitted by this Agreement is in effect) has obtained all real property rights, including Site Control, required for the operation of the Facility during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

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

(g) Seller has certified in writing to Buyer that Seller has complied with the Workforce Requirements in Section 13.4 and provided reasonably requested documentation demonstrating such compliance as set forth in Section 13.4;

(h) Seller has certified in writing to Buyer that Seller has satisfied the community benefit-related obligations set forth in Exhibit Q, and provided reasonably requested documentation demonstrating such compliance;

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

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

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 monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are 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, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, 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), and 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 (to the extent possible); *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.

ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product associated with the

Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product associated with the Facility in accordance with this Agreement. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, for resale in the market or to any third party, and retain and receive any and all related revenues from such resale of the Product; *provided*, that any such resale shall not modify any of Seller's rights or obligations under this Agreement and Seller shall not owe any liability or obligation to any third party.

3.2 **Ownership of Standalone Energy Storage Incentives.** Seller will own any Standalone Energy Storage Incentives, *provided*, that if after the Effective Date of this Agreement, any Standalone Energy Storage Incentive is enacted for standalone energy storage projects, and such Standalone Energy Storage Incentive can be obtained for the Facility by the Commercial Operation Date, then Seller shall use commercially reasonable efforts to cause the Standalone Energy Storage Incentive to be available for the Facility, and Seller shall share with Buyer [REDACTED] of the net present value of any economic benefit actually received by Seller for such Standalone Energy Storage Incentive, with such calculation to be substantiated in reasonable written detail by Seller and with such sharing to occur through annual payments from Seller to Buyer over a period not to exceed five (5) calendar years from the Commercial Operation Date.

3.3 **Future Environmental Attributes.** Seller will own and retain exclusive rights to any and all Future Environmental Attributes.

3.4 **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.

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

(b) Subject to Section 3.6, commencing on the RA Guarantee Date and continuing throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all available Resource Adequacy Benefits to Buyer.

(c) Subject to Section 3.6, for the duration of the Delivery Term, Seller shall take all 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.

3.5 **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. 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 (i) the difference, expressed in kW, of (A) the Guaranteed RA Amount for such month, minus (B) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) (the “**RA Shortfall**”), multiplied by [REDACTED]

[REDACTED] *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, *provided* that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyers at least fifteen (15) Business Days before the deadline (as established by CAISO or any other Governmental Authority) that a load serving entity must meet to submit its resource adequacy plan for the applicable CPUC operating month for the purpose of monthly RA reporting (“**Notification Deadline**”).

3.6 Change in Law.

(a) The Parties acknowledge that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC and that Governmental Authorities, including the CEC, CPUC, and CAISO, may undertake actions from time to time to implement a Change in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with a Change in Law as requested by Buyer, including: (i) updating this Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; (iii) providing additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; or (iv) satisfying new compliance requirements of Governmental Authorities; *provided* that Seller shall have no obligation to (x) amend or update this Agreement, satisfy new compliance requirements, or take other actions not required under this Agreement, if such amendments, updates, compliance requirements, 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, or (y) modify, improve or expand the Facility.

(b) If a Change in Law 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) the Product pursuant to Sections 3.1 and 3.4 (including any such Change in Law that results in an RA Shortfall), 3.7(c) or 4.4 (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 Contract Term to comply with all of such obligations shall be capped at [REDACTED] in the aggregate over the Contract Term (the “**Compliance Expenditure Cap**”).

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice and shall not be liable to Buyer for any failure to deliver any Product as a result thereof) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production and lost payments under this Agreement, if any), the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, in which case Seller shall be excused from taking the Compliance Actions and shall be excused from all affected compliance and delivery obligations hereunder to the extent arising from the failure to take such Compliance Actions (including, if applicable, the obligation to pay RA Deficiency Amounts with respect to RA Shortfalls arising from the failure to take such Compliance Actions). If Buyer does not respond to a Notice given by Seller under this Section 3.6 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller’s actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

(f) If a Change in Law occurring after the Effective Date prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product pursuant to Sections 3.1 and 3.4 (including any such Change in Law that results in an RA Shortfall), 3.7(c) or 4.4, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then (i) Seller shall provide Notice to Buyer of such Change in Law and the consequences for Seller’s performance hereunder, and (ii) Seller shall be excused from the affected compliance and delivery obligations hereunder to the extent arising from the Change in Law (including, if applicable, the obligation to pay RA Deficiency Amounts with respect to RA Shortfalls arising from the Change in Law).

(g) Any change in the value of any attributes provided by Seller to Buyer resulting from any Change in Law shall not affect the Contract Price or Buyer’s obligation to pay Seller for any attributes delivered or for reduced delivery obligations as set forth above.

3.7 CPUC Mid-Term Reliability Requirements. Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC Decision 21-06-035. Seller represents and warrants to Buyer that:

(a) The Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 to any other person or entity; and

(c) Subject to Section 3.6, Seller will reasonably cooperate with Buyer to ensure that Buyer can use the Product to meet the procurement mandates set forth in CPUC Decision 21-06-035.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** Subject to the provisions of this Agreement, commencing on the Initial Delivery Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall accept and pay for the Product, in accordance with the terms of this Agreement.

4.2 **Title and Risk of Loss.** Title and risk of loss related to (a) the Energy, including Charging Energy, Discharging Energy, and Energy stored in the battery, (b) Storage Capacity (but not Capacity Attributes), (c) Ancillary Services, (d) Standalone Energy Storage Incentives, and (e) Future Environmental Benefits shall remain with Seller at all times. Seller shall at all times have the right to sell to any third party (subject to Buyer's right of first offer during the Capacity Exclusivity Period as set forth in Section 14.4, if applicable), or into the CAISO markets all Energy, Storage Capacity, and Ancillary Services (but, not any Capacity Attributes during the Delivery Period, which shall be sold and delivered exclusively to Buyer as Product hereunder), and to retain all revenues and proceeds from such sales for Seller's own account. Without limiting the foregoing, as between the Parties, Seller shall (i) be liable for all CAISO costs and charges for associated Charging Energy, and (ii) be entitled to any CAISO revenues associated with Discharging Energy.

4.3 Storage Capacity Tests.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit M. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit M.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then current Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (not to exceed 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 Exhibit B) shall become the new Storage Capacity at the beginning

of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.4 **Interconnection Capacity**. Subject to Section 3.6, Seller shall ensure throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO Grid, and to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy Benefits.

4.5 **Station Use**. Seller will be responsible for procuring and paying for all Station Use. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

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 to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, and shall comply with Law regarding the disposal and recycling of any equipment associated with the Facility, including batteries. Seller agrees to recycle batteries to the extent possible.

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 and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, land rights, permits, rights and obligations under the Interconnection Agreement, and rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements and other common ownership arrangements to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, a transmission owning entity, and/or third parties pursuant to which certain Interconnection Facilities, land rights, permits, the Interconnection Agreement, interconnection service, and/or transmission service may be subject to joint ownership, common ownership of equity interests in the entity that is the interconnection customer or the holder of land rights or permits, shared use, and/or shared maintenance and operation arrangements ("**Shared Facilities Agreements**"); *provided that* (a) such Shared Facilities Agreements 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 Dedicated Interconnection Capacity, (b) continue to provide for separate metering and a separate CAISO Resource ID for the Facility, and (c) shall not allow any Seller Affiliate or third party to use the Dedicated Interconnection Capacity under any of the Shared Facilities Agreements.

ARTICLE 7 METERING

Seller shall be responsible for installing and maintaining the Storage Facility Meter and measuring Charging Energy and Discharging Energy in accordance with requirements of the CAISO Tariff and applicable Laws.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall deliver an invoice to Buyer within fifteen (15) days after the end of the prior monthly delivery period. Each invoice shall (a) include all supporting documentation and calculations reasonably necessary to evidence all amounts charged thereunder,

and (b) be in a format reasonably specified by Buyer. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. 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 prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least three (3) years 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 Ten Thousand Dollars (\$10,000).

8.4 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) if applicable, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) if applicable, there have been meter inaccuracies; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. 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. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (x) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (y) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (z) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be a guaranty from a Guarantor substantially in the form set forth in Exhibit J. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, 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. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such

Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to post cash or deliver a substitute Letter of Credit or Guaranty that meets the requirements set forth in the definition of Performance Security.

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 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 if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, or other notices except those addressed in the next sentence, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices of claimed breach of this Agreement or an Event of Default must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

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, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; pandemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth in Section 10.1(d) below; and newly issued orders and directives of Governmental Authorities and other foreign and domestic government entities and authorities affecting a Party, its vendors or contractors, or the Party's ability to perform its obligations hereunder, and that were not reasonably anticipated prior to the Effective Date, or if anticipated, could not have been avoided or overcome through the use of commercially reasonable efforts.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include: (i) an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations and variants thereof (“**COVID-19**”); and (ii) newly issued orders and directives of Governmental Authorities and other foreign and domestic government entities and authorities affecting the purchase, import, deployment, or use of equipment, components, or materials intended to be used in the Facility, or construction thereof, and that were not reasonably anticipated prior to the Effective Date, or if anticipated, could not have been avoided or overcome through the use of commercially reasonable efforts.

(d) 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 storage capacity at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event; or (v) any equipment failure, except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date, or to achieve Commercial Operation following the Guaranteed Commercial Operation Date, COD Deadline, or Outside Commercial Operation Date, except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 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. 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. 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)(i)

or (ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2, subject to Section 11.7(b).

10.3 **Notice for Force Majeure.** The claiming Party shall make commercially reasonable efforts to provide the other Party with oral notice of the Force Majeure Event within five (5) Business Days of the date the claiming Party becomes aware of being impacted by such Force Majeure Event, and within two (2) weeks of the date the claiming Party becomes aware of being impacted by such Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide written notice within such two (2)-week period constitutes a waiver of the Force Majeure Event with respect to the period starting on the date such notice is due, and continuing until the date that the notice is provided. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date or to provide the Guaranteed RA Amount, the exclusive remedies for which are set forth in Section 3.5) 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 Section 14.1 or 14.2, as appropriate; or

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

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

(i) the failure by Seller to achieve the Construction Start Date within [REDACTED] days after the Guaranteed Construction Start Date;

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] after the Guaranteed Commercial Operation Date ("**COD Deadline**") [REDACTED]

(iii) [Reserved];

(iv) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(v) if Seller fails to maintain an average Storage Capacity equal to [REDACTED]

(vi) 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, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of 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 thirty (30) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance for not more than thirty (30) days pending delivery of an Early Termination Notice; 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 monetary 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 owed pursuant to Section 11.2(b)(ii) shall be the aggregate of the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include 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 (subject to Section 11.7(b)) 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 (subject to Section 11.7(b)) 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.

[REDACTED]

[REDACTED]

[REDACTED]

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.

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 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 3.5, 11.2, 11.3, 11.7, AND AS PROVIDED IN EXHIBIT B 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. 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 Seller obtaining any permits and other governmental approvals 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, in each case except as would not have any material adverse effect on Seller's ability to perform its obligations hereunder.

(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 its Affiliate will be the applicant on any CEQA documents. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

(g) Seller represents and warrants that it has not and will not knowingly (at the time of purchase) procure equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced**

Labor”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the CPUC, 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 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 **Workforce Requirements.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and applicable orders and decrees of any courts or administrative bodies or tribunals, including employment discrimination laws and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code section 1720, with respect to any construction work contracted by Seller in furtherance of this Agreement, Seller shall use commercially reasonable efforts to: (a) comply with California prevailing wage provisions applicable to public works projects, including those set forth in California Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); (b) encourage the participation and use of (i) contractors, subcontractors and businesses owned by disabled veterans, (ii) contractors, subcontractors and businesses that are located in or employ workers living in a Disadvantaged Community (DAC Zone) as identified by the CalEPA CalEnviroscreen Tool, and (iii) if applicable, the participation of local residents in the construction of the Facility, as well as the ongoing operations and maintenance of the Facility after COD, including permanent residents who live within the applicable county where the Facility is located and within a 50-mile radius of the installation, and to the extent not inconsistent with the foregoing requirements of this subsection (b); and (c) cause the majority of construction work, to the extent feasible in light of Seller’s deadlines set forth herein, to be conducted using union labor (together with the Prevailing Wage Requirement, the “**Workforce Requirements**”). As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the Workforce Requirements, and be able to demonstrate, upon request, compliance with this requirement by providing documentation reasonably requested by Buyer.

13.5 **Diversity Reporting.** Seller agrees to use commercially reasonable efforts to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, 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 below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. 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. Notwithstanding the foregoing, Buyer's consent shall not be required for:

- (a) any assignment of this Agreement by Seller to its Affiliate;
- (b) any assignment of this Agreement or the equity interests in Seller or its upstream owners as collateral for any financing or refinancing of the Facility, including as part of a portfolio financing; or
- (c) provided that the entity that is the Seller after the assignment or Change of Control is a Permitted Transferee, any (i) Change of Control of the Ultimate Parent, or (ii) assignment of this Agreement or Change of Control of Seller occurring in connection with the transfer or conveyance of all or substantially all of the (A) assets, (B) renewable energy portfolio, (C) energy storage facilities, or (D) renewable energy generation and storage facilities, of the Ultimate Parent or any subsidiary thereof owning a portfolio of such facilities.

Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks, or obligations under this Agreement, or to modify this Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions and such additional or modified provisions as may be reasonably requested by a Lender or its agent:

- (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 the 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) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender 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;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) 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 the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(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 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), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *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 possession 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), or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(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 shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, 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) 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 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), such designee shall be approved by Buyer, not to be unreasonably withheld.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.5 **Expansion Projects.** Upon receipt of a written request from Buyer, and not more than once per calendar quarter, Seller shall provide Buyer with information regarding any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or the Ultimate Parent that have a first point of interconnection with a California balancing authority, including any that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities in common with the Facility (each such future phase or separate renewable energy or energy storage project, an “**Expansion Project**”). The Parties agree to cooperate in good faith to determine whether there are opportunities for Buyer to purchase products from any one or more Expansion Projects.

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 the County of San Francisco, California. The Parties intend for the waiver of the right to jury trial in this Section 15.1 to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that such waiver is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with this Agreement, then (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.

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, 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 **Indemnity.** Each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the “**Indemnified Party**”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees (collectively, “**Indemnifiable Losses**”) for personal injury or death to Persons and damage to the property of any third party arising out of or relating to or in any way connected with the Indemnifying Party’s or its Affiliates’ negligence or willful misconduct. Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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 the 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 the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party 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.

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 the 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 [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, 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 [REDACTED]. 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 [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee. If Seller has no direct employees, this requirement shall only be applicable to subcontractors pursuant to Section 17.1(g).

(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 [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

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

(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 [REDACTED] per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, *provided* Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors 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 sixty (60) days after the Effective Date 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 thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller: (a) 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.

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 Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no 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 any of its Affiliates, and Seller’s actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed 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.

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 Product seller and Product 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 or Indemnified Party.

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

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

19.7 **Counterparts.** 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 of 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.

**HECATE GRID HUMIDOR
STORAGE 185 LLC, a Delaware limited
liability company**

By: _____
Name: _____
Title: _____

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Humidor Storage 185

Site includes all or some of the following APNs: [REDACTED]

City: N/A

County: Los Angeles

Longitude/Latitude: 118.115582° / 34.499292°

CEQA Lead Agency (if review under CEQA is required): Los Angeles County

Type of Facility: Standalone Energy Storage

Energy Management Software: Seller's energy management software shall have such capabilities as are required under the CAISO Tariff and consistent with Prudent Operating Practice to supply the Product to Buyer hereunder.

Operating Restrictions of Facility: See Exhibit O.

Dedicated Interconnection Capacity: 185 MW

Delivery Point: Facility PNode

RA Capacity Area: System

Point of Interconnection: SCE Vincent Substation, 220kV Bus

PNode: [REDACTED]

Participating Transmission Owner: SCE

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction Start.**

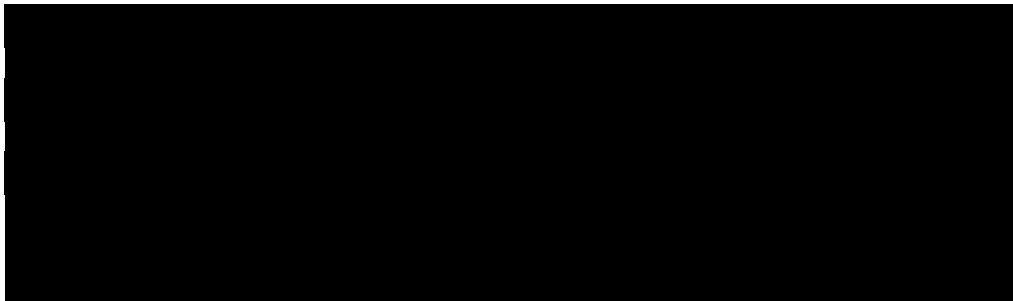
- (a) **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits for the commencement of construction of the Facility, and (ii) execution of one or more engineering, procurement, and construction contracts and issuance of one or more notices to proceed (or reasonable equivalent) thereunder, all in a manner that can reasonably be considered necessary to fully authorize all engineering, procurement and physical construction of the Facility to begin and proceed to completion without foreseeable interruption of material duration. 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 H hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall 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 Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction 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 Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date 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)(i) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2, subject to Section 11.7(b).

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 to Buyer substantially in the form of Exhibit F (the **“COD Certificate”**), (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Commercial Operation has been achieved. Subject to Buyer’s confirmation in Section 2(iii) of this Exhibit B, the **“Commercial Operation Date”** shall be the later of (x) the Expected Commercial

Operation Date or (y) the date in the COD Certificate on which Seller confirmed to Buyer that Commercial Operation was achieved.

- (a) Seller shall 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 either: (i) Seller achieves Commercial Operation for the Facility not later than the Guaranteed Commercial Operation Date; or (ii) Seller has caused the Outside Commercial Operation Date to be applicable pursuant to Section 11.1(b)(ii) and Seller achieves Commercial Operation for the Facility not later than the Outside Commercial Operation Date, then in either case Buyer shall refund to Seller all Construction Delay Damages paid by Seller. Seller shall include the amount of the refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation, and Buyer shall include payment of such refund in its payment of such invoice.
- (c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Seller shall pay COD Delay Damages in advance on a monthly basis. If Commercial Operation is achieved during a month for which Seller has paid COD Delay Damages, Buyer shall repay to Seller the amount of COD Delay Damages not owed by Seller for such month. Seller may include such amounts owed by Buyer in its invoices to Buyer hereunder. The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's failure to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but (x) shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) shall not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
- (d) Notwithstanding any provision in this Agreement to the contrary, if the Commercial Operation Date has not occurred by June 1, 2024, Seller shall use commercially reasonable efforts to deliver to Buyer Resource Adequacy Benefits from a resource other than the Facility in a quantity not to exceed the Storage Contract Capacity ("**Bridge Capacity**"), subject to the following terms and conditions:

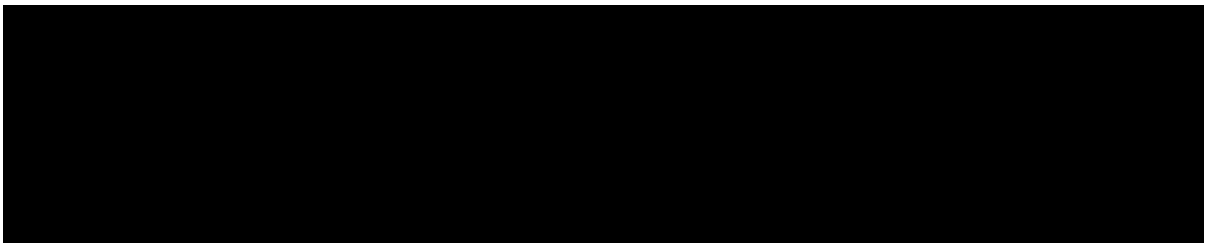
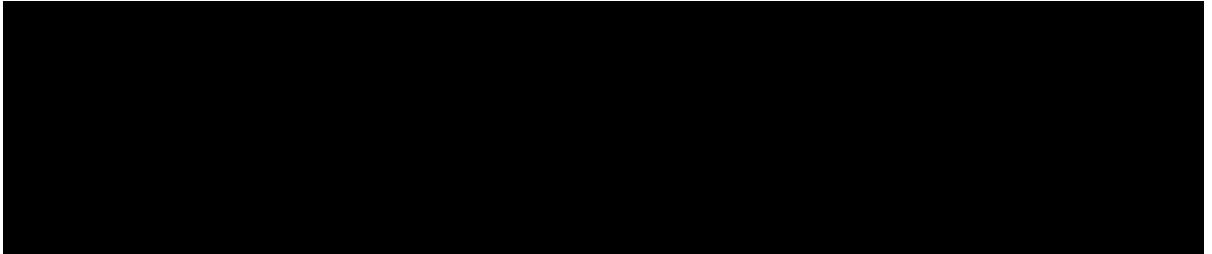
1.



[REDACTED]

2. Bridge Capacity shall be required to comply with all applicable requirements of CPUC Decision 21-06-035 as such decision has been interpreted by the CPUC in public guidance documents or other public communications issued prior to the Effective Date.
 3. The Parties shall cooperate in good faith on arrangements for such Bridge Capacity.
 4. Seller shall notify Buyer in writing of its intent to provide Bridge Capacity and identify the resource from which such Bridge Capacity shall be provided no later than the Notification Deadline for Buyer's Compliance Showings related to such Showing Month.
 5. The Bridge Capacity must otherwise satisfy the requirements of this Agreement.
 6. Seller shall, or shall cause the SC to, submit a Supply Plan for each Showing Month and, if applicable, annual filing, no later than the Notification Deadline for Buyer's Compliance Showings.
 7. Neither Party will be obligated to deliver or pay for any such Bridge Capacity until both Parties have consented to the terms and conditions of such delivery in writing.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within [REDACTED] after the Guaranteed Commercial Operation Date, then, unless Seller meets the conditions and pays the amounts specified in Section 11.1(b)(ii), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii), 11.2, and 11.7(b).
4. **Extension of the Guaranteed Date.** 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 due to:
- (a) any Force Majeure Event;
 - (b) delays caused by any Transmission Provider or the CAISO that are outside of the reasonable control of Seller;

[REDACTED]



Day-for-day extensions under subsections (a) through (f) above shall not exceed [REDACTED]. All of the day-for-day extensions allowed under subsections (a) through (f) above, collectively, are the “**Development Cure Period**”. Notwithstanding anything to the contrary herein, no extension shall be given under the Development Cure Period if the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or, for extensions for a Force Majeure Event under subsection (a) above, if the delay does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3. Seller shall provide prompt Notice to Buyer of a delay with respect to subsections (b) through (f) above, but in no case more than thirty (30) days after Seller became aware of such delay, 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 Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation for delays with respect to subsections (b) through (f) demonstrating to Buyer’s reasonable satisfaction that such delay did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Storage Contract Capacity.** If, at Commercial Operation, the Installed 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 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 G hereto specifying the new Installed 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 [REDACTED] for each MW that the

Storage Contract Capacity exceeds the Installed Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Initial Delivery Date.** For clarity, the Parties acknowledge and agree that (a) for all purposes of the Agreement (including: Sections 2.3, 8.8, 10.1(e), 10.2, 11.1(b)(ii), 11.7, and 14.4; all provisions of this Exhibit B; and Seller's obligations to pay COD Delay Damages, Enhanced Delay Damages, and Capacity Damages, and to procure Bridge Capacity), Commercial Operation shall occur when the conditions specified in the first sentence of Section 2 of this Exhibit B are met, and the Commercial Operation Date shall occur when the conditions specified in the second sentence of Section 2 of this Exhibit B are met, and (b) there is expected to be a delay between the occurrence of Commercial Operation and the Initial Delivery Date due to the time required (under rules in effect as of the Effective Date) to effectuate delivery of the Product for the first Showing Month after the Commercial Operation Date.

EXHIBIT C
COMPENSATION

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

For each month during the Delivery Term, Buyer shall pay Seller an amount equal to [REDACTED]

[REDACTED] Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product. If the Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Capacity is applicable.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller to be Scheduling Coordinator. Upon Initial Synchronization of the Facility to the CAISO Grid, and during the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. Seller shall perform or ensure that its third party Scheduling Coordinator performs all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Charging Energy, Discharging Energy, Ancillary Services, and Storage Capacity delivered from the Facility. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

(c) CAISO Settlements. Seller or its third party Scheduling Coordinator shall be responsible for all settlement functions with the CAISO related to the Facility.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated [*DATE*] (“**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.

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. The 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.
5. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.
8. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Energy Supply Bids into the CAISO Day-Ahead Market and Real-Time Market in respect to the Facility.

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20____.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT G

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated [*DATE*] (“**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.

I hereby certify the following:

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 4.3 and Exhibit M (the “**Installed Capacity**”).

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Resource Adequacy Agreement dated [DATE] (“**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 notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
- 2 the Construction Start Date occurred on _____ (the “**Construction Start Date**”); and
- 3 the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiration Date:

Beneficiary:

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

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [*bank email address*] or (c) facsimile to [*bank fax number*] confirmed by [email to [*bank email address*]]. Transmittal by facsimile or email shall be deemed delivered when received.

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be

made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the 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, Attn: Director of Finance, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

(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, 1125 Tamalpais Avenue, San Rafael, CA 94901, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

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

OR

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

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

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

[Specify account information]

Marin Clean Energy

Name and Title of Authorized Representative

Date _____

EXHIBIT J

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

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 prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the ESA, including, without limitation, liquidated damages, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the ESA (the “**Obligations**”), and any and all expenses (including reasonable attorneys’ fees) reasonably incurred by Buyer in enforcing its rights under this Guaranty, *provided*, that Guarantor’s aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed [_____] Dollars (\$_____) (the “**Guaranteed Amount**”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Obligations shall thereafter reduce the Guaranteed Amount hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guaranty of the full and punctual payment, and not of collection, of the Obligations 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 Obligations from Seller, any other guarantor of the Obligations or any other Person or entity or resort to any other means of obtaining payment of the Obligations. In the event Seller shall fail to duly, completely or punctually pay any Obligations as required pursuant to the ESA, Guarantor shall promptly pay such amount as required.

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 ESA. If Seller fails to pay any Obligations as required pursuant to the ESA within 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 Obligations. 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 pay such amount within five (5) Business Days following its receipt of the Payment Demand from Buyer.

3. Scope and Duration of Guaranty. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Obligations have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the ESA. 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. The Guarantor waives any defense based on or arising out of any defense of the Seller or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of the Seller, other than the indefeasible payment in full in cash of all Obligations. 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 any of the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount,
- (ii) any amendment, modification or other alteration of the ESA,
- (iii) any indemnity agreement Seller may have from any party,
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount,
- (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 ESA 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,
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever,
- (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,
- (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 ESA

or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the ESA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the ESA, 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.

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 Obligations 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 ESA, 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 Obligations shall be extended, or such performance or compliance shall be waived,
- (ii) the obligation to pay any Obligations shall be modified, supplemented or amended in any respect in accordance with the terms of the ESA,
- (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 payment in full of all Obligations, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Obligations 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 as of the Effective Date that:

- a. it has all necessary and appropriate corporate powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty,
- b. it is an Affiliate of Seller (unless this requirement has been waived by Buyer),
- c. it has a credit rating assigned by S&P of BBB- or higher, or by Moody's of Baa3

or higher, to its unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if it does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, *provided*, that if the ratings by S&P and Moody's are not equivalent, the lower rating shall apply;

- d. it has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000),
- e. it will treat its obligations under this Guaranty *pari passu* with its senior unsecured debt obligations,
- f. Guarantor has subjected itself to the jurisdiction of the state and federal courts of San Francisco County, California and agrees to be subject to service of process in connection therewith,
- g. 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,
- h. 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,
- i. 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
- j. 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 (4) Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by email, such notice shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Any party may change its address or email address 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:

Marin Clean Energy

1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Director of Finance
Email: finance@mcecleanenergy.org

If delivered to Guarantor, to it at:

[REDACTED]
Attn: [REDACTED]
Email: [REDACTED]

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

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns. 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 K**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Resource Adequacy 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 3.5 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT L
RESERVED

EXHIBIT M

STORAGE CAPACITY TESTS

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 ISO procedures and this Exhibit M (except for any requirements in this Exhibit M that are inconsistent with ISO procedures), and shall establish the Storage Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year Seller will perform a Storage Capacity Test and will give Buyer ten (10) Business Days' prior Notice of such Storage Capacity Test. In addition, Buyer shall have the right to require a test or retest of the Storage Capacity Test at any time upon no less than 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).

C. Test Results and Re-Setting of Storage Capacity. No later than fifteen (15) days following any Storage Capacity Test, Seller shall submit a testing report detailing the results and findings of the Storage Capacity Test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.3(c) of the Agreement and Part II(I) below, the actual storage capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Storage Contract Capacity) shall become the new Storage Capacity at the beginning of the day following the completion of the test for calculating compensation and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit M. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit M as a "**SCT**". Buyer or its representative may be present for the SCT and shall have access to metering equipment calibration records.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Storage Capacity;

- (2) Determine the amount of Energy required to fully charge the Facility;
- (3) Determine the Facility charge ramp rate; and
- (4) Determine the Facility discharge ramp rate.

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

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Facility up to the Maximum Stored Energy Level (“**Energy In**”);
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system (“**Energy Out**”);
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit O) at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit O) at the Storage Facility Meter (MW);
- Amount of time between the Facility’s electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Facility’s electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level.

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

- (1) discharge time (minutes);
- (2) charging energy (MWh);
- (3) discharging energy (MWh);
- (4) Stored Energy Level (MWh).

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

- (1) successfully started;
- (2) operated for at least four (4) consecutive hours at Maximum Discharging

Capacity;

- (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
- (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit O); and
- (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) General. At all times during a SCT, the Facility shall be operated in compliance with Prudent Operating Practices and applicable operating protocols recommended, required or established by the manufacturer.
- (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with this Part II.F.
- (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 Capacity, Energy In, Energy Out, Charging Capacity,

the current charge and discharge ramp rate, and Stored Energy Level determined by the SCT, including supporting calculations; and

- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

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

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

- H. Supplementary Storage Capacity Test Protocol. No later than thirty (30) days prior to commencing Facility startup and commissioning, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit M 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 M.
- I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four (4) hours of discharge (up to, but not required to be in excess of, the product of (i) the original Storage Capacity set forth on the Cover Sheet, as such original Storage Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4)), shall be divided by four (4) hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.3(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

Part III. SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Conditions Precedent to SCT

- Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured.
- Control System Functionality: The control system is operable within the requirements and has been successfully configured to receive data from the battery system and transfer data to the onsite servers for the calculation, recording and archiving of data points.

- The following Commercial Operation tests will be repeated annually:
 - PMAX Capacity Test

B. PMAX Capacity Test

1. Purpose: This test will demonstrate the PMAX and will hold the storage facility's maximum operating level (MW), up to the Storage Contract Capacity, for up to five (5) minutes, "**Qualified Power Capacity**".
2. Procedure:
 - i. System starting state: The storage facility will be in the on-line state with each battery subsystem at 100% usable state of charge (SOC) and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
 - ii. Record the storage facility active power level at the Storage Facility Meter.
 - iii. Command the storage facility to follow a signal equal to the storage facility's maximum operating level for five (5) minutes.
 - iv. Record and store the storage facility active power response. Measurements will be made at the point of interconnection (POI) and by the control system with a recording in the storage facility historian.
 - v. System end state: The storage facility will be in the on-line state and at a commanded active power level of 0 MW.

Pass/Fail Criteria		
The storage facility active power response and the commanded level shall be within $\pm 2\%$ as measured by the sum of values at the POI. The time to full output shall be less than 100 ms. The hold period of such active power value shall be at least five (5) minutes and recorded in the control system historian.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

EXHIBIT N

NOTICES

Hecate Grid Humidor Storage 185 LLC ("Seller")	Marin Clean Energy ("Buyer")
All Notices: Street: 621 W. Randolph Street City: Chicago, IL 60662 Attn: Hecate Grid Contract Administrator Phone: (312) 722-5901 Email: GridNotices@HecateEnergy.com	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: Federal Tax ID Number:	Reference Numbers: <div style="background-color: black; width: 100%; height: 1.2em;"></div>
Invoices: Attn: Hecate Grid Accounting Phone: (312) 722-5901 Email: HEFinance@HecateEnergy.com	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Payments: Attn: Hecate Grid Accounting Phone: (312) 722-5901 Email: HEFinance@HecateEnergy.com	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: <div style="background-color: black; width: 100%; height: 1.2em;"></div>
Credit and Collections: Attn: Phone: Email:	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	Emergency Contact: Attn: Phone: Email:

EXHIBIT O**OPERATING RESTRICTIONS**

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, and (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit O.

	Description	Value	Notes
1.	Storage Contract Capacity	_____ MW	
2.	Maximum Stored Energy Level	_____ MWh	
3.	Minimum Stored Energy Level	_____ MWh	
4.	Maximum Charging Capacity	_____ MW	
5.	Minimum Charging Capacity	_____ MW	
6.	Maximum Discharging Capacity	_____ MW	
7.	Minimum Discharging Capacity	_____ MW	
8.	Maximum State of Charge (SOC) during Charging	100 %	
9.	Minimum State of Charge (SOC) during Discharging	0 %	
10.	Annual Average State of Charge Range (SOC)	_____ % to _____ %	
11.	Annual Cycle Limit	365 cycles / year	
12.	Daily Dispatch Limits	Charging: 2 cycles per operating day Discharging: 2 cycles per operating day	
13.	Ramp rate	0 – XXX MW/min	
14.	Charging energy source	CAISO Grid	
15.	Interconnection Capacity Limit	_____ MW	
16.	Ancillary Services		

EXHIBIT P
RESERVED

EXHIBIT Q

COMMUNITY BENEFITS

Seller agrees to contribute One Hundred Thousand Dollars (\$100,000) in furtherance of Buyer-directed community clean energy education, job training, and clean energy infrastructure (“**Community Benefit Fund**”). Seller shall cause these funds to be deposited in a distinct and separate account established and maintained at a bank or financial institution selected by Buyer within sixty (60) days after the Construction Start Date.

The Community Benefit Fund will be administered by Buyer, with the collaboration and input of Seller, and utilized for community clean energy education, job training, and clean energy infrastructure.

EXHIBIT R

DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier 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. Responses are collected for informational and reporting purposes only pursuant to SB 255.

*** Required**

1. Email address *

2. Business Name *

3. Where is your business located/headquartered? *

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

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned 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

10/9/2020

MCE Supplier Diversity Questionnaire

5. If you answered "yes" or "qualified but not certified", under which categories?

Please choose all that apply. *

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

Check all that apply.

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

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

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

Check all that apply.

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

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here:

<https://sch.supplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

Check all that apply.

- ☐ 1 Agricultural production- crops
- ☐ 2 Agricultural production- livestock
- ☐ 7 Agricultural services
- ☐ 8 Forestry
- ☐ 9 Fishing, hunting, and trapping
- ☐ 10 Metal mining
- ☐ 12 Coal mining
- ☐ 13 Oil and gas extraction
- ☐ 14 Nonmetallic minerals, except fuels
- ☐ 15 General building contractors
- ☐ 16 Heavy construction contractors
- ☐ 17 Special trade contractors
- ☐ 20 Food and kindred products
- ☐ 21 Tobacco manufactures
- ☐ 22 Textile mill products
- ☐ 23 Apparel and other textile products
- ☐ 24 Lumber and wood products
- ☐ 25 Furniture and fixtures
- ☐ 26 Paper and allied products
- ☐ 27 Printing and publishing
- ☐ 28 Chemicals and allied products
- ☐ 29 Petroleum and coal products
- ☐ 30 Rubber and miscellaneous plastics products
- ☐ 31 Leather and leather products
- ☐ 32 Stone, clay, glass, and concrete products
- ☐ 33 Primary metal industries
- ☐ 34 Fabricated metal products
- ☐ 35 Industrial machinery and equipment
- ☐ 36 Electrical and electronic equipment
- ☐ 37 Transportation equipment
- ☐ 38 Instruments and related products
- ☐ 39 Miscellaneous manufacturing industries
- ☐ 41 Local and interurban passenger transit

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVY0dqeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 42 Motor freight transportation and warehousing
- ☐ 43 U.S. Postal Service
- ☐ 44 Water transportation
- ☐ 45 Transportation by air
- ☐ 46 Pipelines, except natural gas
- ☐ 47 Transportation services
- ☐ 48 Communications
- ☐ 49 Electric, gas, and sanitary services
- ☐ 50 Wholesale trade--durable goods
- ☐ 51 Wholesale trade--nondurable goods
- ☐ 52 Building materials, hardware, garden supply, & mobile home
- ☐ 53 General merchandise stores
- ☐ 54 Food stores
- ☐ 55 Automotive dealers and gasoline service stations
- ☐ 56 Apparel and accessory stores
- ☐ 57 Furniture, home furnishings and equipment stores
- ☐ 58 Eating and drinking places
- ☐ 59 Miscellaneous retail
- ☐ 60 Depository institutions
- ☐ 61 Nondepository credit institutions
- ☐ 62 Security, commodity brokers, and services
- ☐ 63 Insurance carriers
- ☐ 64 Insurance agents, brokers, and service
- ☐ 65 Real estate
- ☐ 67 Holding and other investment offices
- ☐ 70 Hotels, rooming houses, camps, and other lodging places
- ☐ 72 Personal services
- ☐ 73 Business services
- ☐ 75 Automotive repair, services, and parking
- ☐ 76 Miscellaneous repair services
- ☐ 78 Motion pictures
- ☐ 79 Amusement and recreational services
- ☐ 80 Health services
- ☐ 81 Legal services
- ☐ 82 Educational services
- ☐ 83 Social services
- ☐ 84 Museums, art galleries, botanical & zoological gardens
- ☐ 86 Membership organizations
- ☐ 87 Engineering and management services

<https://docs.google.com/forms/d/12VVqgNBa7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit>

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10/9/2020

MCE Supplier Diversity Questionnaire

- ☐ 88 Private households
- ☐ 89 Miscellaneous services
- ☐ 91 Executive, legislative, and general government
- ☐ 92 Justice, public order, and safety
- ☐ 93 Finance, taxation, and monetary policy
- ☐ 94 Administration of human resources
- ☐ 95 Environmental quality and housing
- ☐ 96 Administration of economic programs
- ☐ 97 National security and international affairs

10. 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.

The questions in this section relate to Supplier 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."

Subcontractors

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

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? *

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

10/9/2020

MCE Supplier Diversity Questionnaire

12. 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. Example: Electrical Design Technology, Inc. ; \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

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."

10/9/2020

MCE Supplier Diversity Questionnaire

14. 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.

Check all that apply.

- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, history of local hire but not in this contract with MCE
- ☐ Yes, history of union labor but not in this contract with MCE
- ☐ Yes, history of multi-trade PLA but not in this contract with MCE
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

15. 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.

16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

10/9/2020

MCE Supplier Diversity Questionnaire

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

18. 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, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

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

Mark only one oval.

- ☐ Yes, including in this contract with MCE
- ☐ Yes, but not in this contract with MCE
- ☐ No
- ☐ Not applicable

10/9/2020

MCE Supplier Diversity Questionnaire

20. If yes, please describe the apprenticeship programs supported/used.

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

Equity, Diversity,
Inclusion, and Justice

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

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

22. 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.

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVY0dqfeGTegz9U-q63osn6Q/edit>

10/11

10/9/2020

MCE Supplier Diversity Questionnaire

This content is neither created nor endorsed by Google.

Google Forms

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3IVYOdqfeGTegz9U-q63osn6Q/edit>

11/11



Hecate Grid Humidor Storage 185 LLC Energy Storage Agreement

MCE Board of Directors – July 21, 2022

What is Open Season?

MCE's annual solicitation for large-scale renewable energy and storage projects



Open Season Overview

Goals

- Meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
- Add Resource Adequacy (RA) supply to the portfolio
- Add resources that would fulfill the Mid Term Reliability (MTR) obligations as outlined in the CA Public Utilities Commission (CPUC) decision D.21-06-035

Product Types

- Renewable Product Content Category 1 energy (PCC1)
- Paired & stand-alone energy storage

CPUC Mid-Term Reliability Mandate

Bucket	Requirements	MCE's Obligation	Online Date	Resource Options
Generic	<ul style="list-style-type: none"> Resource Adequacy(RA) 	231 MW	Part 1 - 8/2023 Part 2 - 6/2024	<ul style="list-style-type: none"> PV+4Hour Storage Stand-Alone Storage Wind Geo or Biomass Long-Term Imports
DCPP Replacement (5 Hour)	<ul style="list-style-type: none"> Zero emissions or RPS 5MWh/1MW (HE18 - HE22) 	72 MW	6/2025	<ul style="list-style-type: none"> PV+5Hour Storage Geo/Bio/Landfill gas Demand Response
Long Duration Storage (8 Hour)	<ul style="list-style-type: none"> 8 Hours - full capacity discharge 	29 MW	6/2026	<ul style="list-style-type: none"> Stand-Alone Storage
Clean-Firm (Geo/Bio)	<ul style="list-style-type: none"> Firm 80% capacity factor Not weather dep or use-limited Zero emissions or RPS 	29 MW	6/2026	<ul style="list-style-type: none"> Geothermal Biomass/Landfill gas

CPUC Mid-Term Reliability Mandate

Bucket	Requirements	MCE's Obligation	Online Date	Resource Options	
Generic	<ul style="list-style-type: none"> Resource Adequacy(RA) 	231 MW	Part 1 - 8/2023 Part 2 - 6/2024	<ul style="list-style-type: none"> PV+4Hour Storage Stand-Alone Storage Wind Geo or Biomass Long-Term Imports 	Hecate Grid Humidor Storage would be compliant with this tranche of the mandate
DCPP Replacement (5 Hour)	<ul style="list-style-type: none"> Zero emissions or RPS 5MWh/1MW (HE18 - HE22) 	72 MW	6/2025	<ul style="list-style-type: none"> PV+5Hour Storage Geo/Bio/Landfill gas Demand Response 	Golden Fields Solar + Storage will be used for compliance with this tranche of the mandate. Contract executed 2/4/2022
Long Duration Storage (8 Hour)	<ul style="list-style-type: none"> 8 Hours - full capacity discharge 	29 MW	6/2026	<ul style="list-style-type: none"> Stand-Alone Storage 	
Clean-Firm (Geo/Bio)	<ul style="list-style-type: none"> Firm 80% capacity factor Not weather dep or use-limited Zero emissions or RPS 	29 MW	6/2026	<ul style="list-style-type: none"> Geothermal Biomass/Landfill gas 	

Overview:

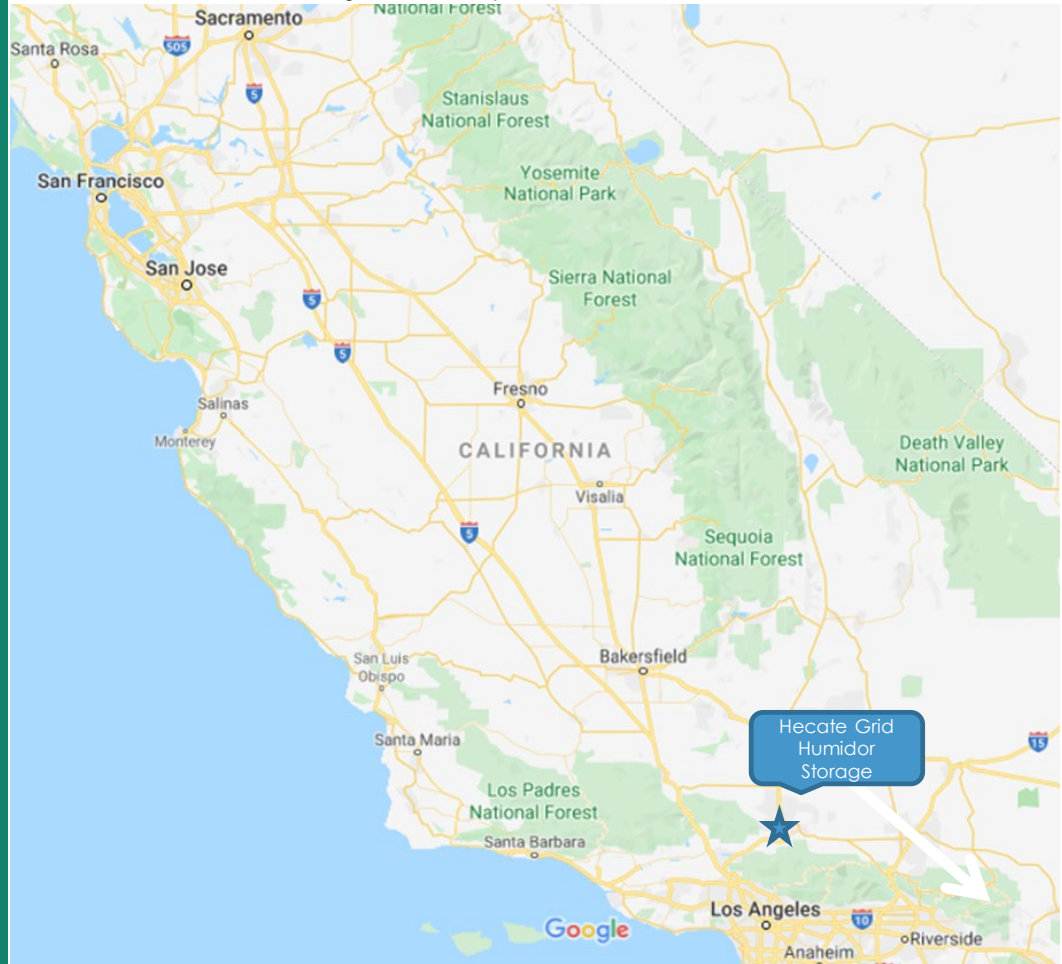
Hecate Grid Humidor Storage 185 LLC

- 185 MW Battery Energy Storage System
- Stand-alone / Grid charged
- Los Angeles County, CA
- Best combination of economics and project viability



Hecate Grid Humidor Storage Project

- 185 MW of RA capacity
- On-line date: 4/1/2024
- 10 year term
- No credit/collateral obligations for MCE



Unique Terms & Conditions

- Financial incentives for performance
- Union labor requirement
- \$16.65MM security deposit to ensure milestones are met
- Seller will make a one-time contribution of \$100,000 to community benefit initiatives in MCE's service area and/or communities adjacent to the project location
- RA delivery guarantee
- Fixed price over the contract term with no annual escalation

Impact to MCE's Net Requirement for RA

***Net Requirement
For RA (MW)***

<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>
1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300

The 185 MW of expected RA from the Hecate Grid Humidor Storage project would help MCE meet its future RA targets by reducing open positions that currently exist between 2024 and 2033.

Impact to MCE's total obligation = 14%

Recommendation

Approve energy storage agreement between MCE and Hecate Grid Humidor Storage 185 LLC

Rationale:

- RA capacity produced by the facility would complement MCE's existing portfolio of resources
- The project type, size, specifications and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order
- The project is being developed and will be operated by an experienced team
- The project is highly viable, with most major pre-construction milestones in place

Thank You

David Potovsky,
Principal Power Procurement Manager
dpotovsky@mceCleanEnergy.org





July 21, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: MCE Policy 018-Ticket and Pass Distribution (Agenda Item #08)

ATTACHMENT: Proposed MCE Policy 018 – Ticket and Pass Distribution

Dear Board Members:

Summary:

The Political Reform Act ("the Act") (Government Code Section 81000, et seq.) requires certain state and local government officials to report financial interests on a Form 700 to promote transparency of disqualifying financial conflicts of interest for decision-makers within the agency. Reportable financial interests also include any gifts received by the official in the course of their work.

The Fair Political Practices Commission ("FPPC"), which has the primary responsibility to oversee the administration of the Act, allows officials to receive certain tickets and passes in the course of their work as a gift exemption if certain parameters are met pursuant to the agency's established policy on such tickets and passes. Staff has drafted the proposed Policy 018 – Ticket and Passes Distribution ("Policy") to establish circumstances in which MCE would be able to distribute tickets and/or passes to MCE Officials (which would include every director, officer, employee, or consultant of MCE). Under the proposed Policy, MCE Officials would be able to accept tickets and passes that are in the course of their work for MCE and is for a public purpose, as defined in the Policy, without needing to claim the ticket and/or pass as a gift on the individual's Form 700. For any tickets and/or passes distributed under the proposed Policy, MCE would submit a Form 802 to the FPPC to report any tickets and/ or passes distributed to an MCE Official to provide for the transparency intended under such a Policy.

Fiscal Impacts:

None.

Recommendation:

Approve Proposed MCE Policy 018 – Ticket and Pass Distribution.



Policy 018 – MCE Ticket and Pass Distribution

Purpose

The purpose of this policy is to establish a procedure for the distribution, use and reporting of tickets or passes to a facility, event, show or performance for training, education, entertainment, amusement, recreation or similar purposes in compliance with Section 18944.1 of the FPPC Regulations, which sets out the circumstances under which a public agency's distribution of tickets or passes to a public official or employee does not result in a gift to the public official or employee. Tickets or passes to an event distributed and accounted for in compliance with this policy and FPPC Regulation 18944.1 will not be considered as gifts to public official or employee who make use of such tickets or passes.

Definitions

For purposes of this policy, the following definitions apply:

- "FPPC" means the California Fair Political Practices Commission.
- "MCE" means Marin Clean Energy.
- "MCE Official" means every director, officer, employee, or consultant of MCE.
- "Pass" means a Ticket that provides repeated access, entry, or admission to a facility or series of events, shows or performances, and for which similar passes are sold to the public.
- "Policy" means and refers to this Ticket and Pass Distribution Policy.
- "Ticket" means anything that provides admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

Tickets and Passes Covered by this Policy

Tickets and Passes Covered by this Policy include those:

1. Gratuitously provided to MCE by an outside source and not earmarked by the outside source for use by a particular MCE Official;
2. Acquired by MCE as consideration pursuant to the terms of a contract for the use of a MCE venue, equipment or services;
3. Available to MCE because MCE controls the event; or
4. Purchased by MCE at fair market value.

Limitations

This Policy does not apply to:

1. Tickets provided to MCE Officials by an outside source to an event at which the MCE Official performs a ceremonial role or function on behalf of MCE;
2. Tickets for which the MCE Official pays MCE the face value of the Ticket;
3. Tickets for which the MCE Official treats the Ticket or Pass as income consistent with applicable state and federal income tax laws and MCE reports the distribution of the Ticket or Pass as income to the MCE Official in compliance with FPPC Regulation Section 18944.1(d); or
4. Other benefits, such as food, beverages or other items, that are provided to the MCE Official at the event, if such benefits are not included as part of the admission to the event.

Provisions

MCE may distribute Tickets or Passes under the following provisions:

1. The CEO, or his or her designee, is responsible for the distribution of Tickets and Passes

in accordance with this Policy. All requests for Tickets or Passes falling within the scope of this Policy must be made in accordance with any procedures that may be established by the CEO. The public purpose to be accomplished must be identified with specificity and must not be a pretext to accomplish some other purpose. The following are deemed to be public purposes under this Policy:

- a. Promotion of public exposure to, and awareness of, new, upcoming or existing MCE products, services or facilities;
 - b. Promotion of special events to which MCE is a party;
 - c. Promoting business activity, growth, or development that furthers MCE's purposes;
 - d. Promotion of MCE brand recognition, visibility, or profile;
 - e. Meeting and greeting individuals in MCE's service area to gain feedback on and make observations of the quality and awareness of MCE services or to gain insight into what MCE services that individuals would like to see MCE make available;
 - f. Promotion of open, visible, and accessible government by MCE Official participation and/or availability of an event;
 - g. Increasing use or appreciation of MCE-run, sponsored or supported community programs or public programs at MCE facilities or at facilities in partnership with MCE;
 - h. Attracting and retaining highly qualified employees for MCE service;
 - i. Promoting enhanced MCE employee performance or morale;
 - j. For the purpose of networking with other community and civic leaders at various types of events;
 - k. Furthering any other public purpose that MCE is required or authorized by law to pursue; or
 - l. Any public purpose similar to those listed herein or any public purpose identified in any MCE contract or as may be determined by resolution of the Board of Directors.
2. Tickets or Passes distributed to a MCE Official pursuant to this Policy must not be transferred to any other person except to members of such MCE Official's immediate family (spouse, registered domestic partner, or dependent children) solely for their personal use, which personal use may include no more than one guest accompanying the MCE Official or their immediate family member.
 3. No person who receives a Ticket or Pass pursuant to this Policy may sell or receive reimbursement for the value of such Ticket or Pass.

Reporting Requirements

The following disclosure requirements must be met: For each Ticket or Pass distributed under this Policy, a Form 802 report must be filled out and posted on MCE's website within 45 days of distribution. A link to the form will be emailed to the FPPC. The Form 802 report or other report must contain the following information:

1. The name of the person receiving the Ticket or Pass, except if the Ticket or Pass is distributed to an organization outside of MCE, then MCE may post the name, address, description of the organization, and the number of Tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;
2. A description of the event;
3. The date of the event;
4. The face value of the Ticket or Pass;
5. The number of Tickets or Passes provided to each person;
6. A description of the public purpose under which the distribution was made or, alternatively, that the Ticket or Pass was distributed as income to the MCE Official.



July 21, 2022

TO: MCE Board of Directors

FROM: Michael Callahan, Associate General Counsel

RE: Policy Update of Regulatory and Legislative Items

Dear Board Members:

Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC) impacting Community Choice Aggregation (CCA) and MCE.

I. **Legislative Advocacy**

a. **State Legislative Advocacy**

The state legislature is on recess for the month of July, before reconvening for the month of August. Below, staff provide the following updates on bills previously identified as priorities as well as on the state budget.

SB 881 (Min) - This bill would have made electric sector greenhouse gas (GHG) targets enforceable by allowing the California Public Utilities Commission (CPUC) to have authority over CCA procurement and penalties. After lengthy negotiations with Senator Min came to an impasse, MCE took an oppose position. While MCE strongly supports California's GHG reduction goals, the mechanism proposed in the bill would have been unworkable. As a result of concerns expressed by MCE and other key stakeholders, SB 881 will not move forward this year.

SB 1158 (Becker) - This bill would add a new set of emissions reporting rules to support achievement of hourly electric sector GHG targets. Both CalCCA and MCE engaged in lengthy and productive conversations with Senator Becker and his staff, and were able to work out meaningful amendments that would help MCE comply with the proposed new rules. MCE will not take a position on the bill, but is grateful for the Senator's willingness

to engage in these important conversations and for his leadership in advancing clean energy policy in California.

SB 1287 (Bradford) - This bill would have increased the Financial Security Requirements (FSR) applicable to CCAs. This bill did not receive a hearing in its house of origin and will also not advance this year.

SB 1020 (Laird, Caballero, Durazo, Atkins) - This bill would establish interim targets for renewable and emissions-free power leading up to the existing goal of 100% renewable and emissions free power by 2045. SB 1020 would also establish an independent California Affordable Decarbonization Authority and a Climate and Equity Trust Fund within the state budget. Together, these entities could fund a range of programs including, but not limited to, wildfire mitigation, transportation electrification, energy efficiency, and other public purpose programs currently funded through electric rates. Funding these programs through sources other than electric bills will help reduce rates, making it easier for customers to pay their bills and increase the affordability of building and transportation electrification efforts. MCE has come out in support of the bill and continues to work with Senate leadership to ensure a favorable outcome for CCAs, including a steady, sufficient source of funding for the most essential programs, including energy efficiency and the CARE and FERA programs, which provide bill savings assistance for low-income customers.

AB 205 - AB 205 is a controversial energy trailer bill that followed the passage of the state budget last month. Trailer bills are a common legislative vehicle to add details that are missing from the overall state budget bill. At a high level, AB 205 includes:

- Nearly \$1 billion for electric and gas debt relief for residential customers of IOUs and CCAs;
- Changes to several of the CPUC's rate design rules that are intended to help reduce bills for customers struggling the most with affordability;
- Long Duration Energy Storage Program to spur technologies including, but not limited to, compressed air storage, mechanical storage, thermal storage, advanced chemistry batteries, and hydrogen demonstration projects;
- Distributed Electricity Backup Assets Program to support on-call emergency supply or load reduction during extreme summer events;
- Demand Side Grid Support Program to support dispatchable customer demand response and backup generation as on-call emergency supply and load reduction during extreme summer events;
- Strategic Reliability Reserve funding to allow the California Department of Water Resources (DWR) to enter into contracts to support the Distributed Electricity Backup Assets Program and the Demand Side Grid Support Program;
- Very streamlined temporary permitting processes for new or **expanded generation facilities, removing authority from state and** local agencies in many instances.

MCE is advocating for a few amendments to the bill that would help it best align with MCE's needs and priorities. Staff look forward to providing additional updates at a future meeting.

b. Federal Legislative Advocacy

As noted in the May Staff Report, this year MCE submitted requests for federal Community Project Spending (also known as earmarks) to support expansion of three existing initiatives - EV Charging Stations, Energy Storage for critical municipal facilities, and the Healthy Homes program. The first step in this process is to persuade a member of Congress to submit these requests on MCE's behalf. MCE is happy to report that all three of our requests were submitted into the federal budget process, by two members each: Healthy Homes was submitted by Rep. Garamendi and Sen. Feinstein; EV Charging Stations was submitted by Rep. Huffman and Sen. Padilla, and Energy Storage was submitted by Sens. Feinstein and Padilla.

The second step of this process is for the submitted requests to survive the markup process in their relevant policy committee. MCE is happy to report that both of our requests submitted on the House side (Healthy Homes and EV Charging Stations) survived markup and will progress to the next stage of the federal budget process. Markups on the Senate side begin later this month, after which we will know whether our Energy Storage request made it through this second step.

The federal budget process is still in its relatively early stages, and the ultimate fate of these requests is far from certain at this point. However, the recognition MCE has achieved thus far in this process is a testament to the strength of our programs and our reputation as a stable and reliable yet nimble and innovative organization. Staff look forward to providing additional updates on this process as the year progresses.

II. California Public Utilities Commission

a. Resource Adequacy Final Decision Adopting 24-Slice Compliance Framework

On June 23, 2022 the CPUC approved a Final Decision in the Resource Adequacy (RA) proceeding adopting a new RA compliance framework for full implementation in 2025. The new RA framework is focused on meeting capacity needs on a 24-hour basis as opposed to the existing RA compliance framework that focuses on meeting monthly peak load. Under the newly adopted framework, which has come to be known as the "24-Slice" framework, MCE will need to demonstrate it has procured a RA portfolio sufficient to meet its forecast peak load on an hourly basis. 2024 will be a test year for the new framework to identify and evaluate implementation and compliance reporting issues in anticipation of full implementation in 2025. In 2024 MCE will need to demonstrate

compliance with the CPUC's existing RA framework and preview, on a non-binding basis, how its RA portfolio might perform under the 24-Slice framework.

Although MCE supported the transition to this more granular RA compliance framework, MCE and other CCAs also advocated for framework enhancements that would support efficient transactability in the RA market and better enable load-serving entities (LSEs) to optimize their RA portfolios. These enhancements included opportunities to trade load obligations or resource attributes on an hourly basis to help mitigate LSE over-procurement and reduce compliance costs. The Final Decision rejected these proposed enhancements, but allowed for future consideration of such enhancements if demonstrated to be necessary once the new framework is implemented.

b. PG&E's Clean Substation Microgrid Solutions Framework Application

On July 8, 2022, MCE and Sonoma Clean Power Authority jointly filed an opening brief on Pacific Gas and Electric's (PG&E) Clean Substation Microgrid Solutions Proposed Framework Application. In Decision 21-01-018 of the Microgrid and Resiliency Strategies Rulemaking (R.19-09-009), the CPUC directed PG&E to transition away from using diesel generators for temporary generation at substations during transmission outages. The CPUC outlined a process to transition to clean temporary generation resources after 2021 and directed PG&E to file a related Application.

MCE and SCP filed an Opening Brief on the Application urging the CPUC to adopt a modified Proposed Framework that promotes clean microgrids and more explicitly protects CCA communities during PSPS events. MCE and SCP made procedural recommendations to require PG&E coordinate, protect and communicate with CCAs during the implementation of the Proposed framework. Additionally, MCE and SCP supported modifications to the site selection methodology that more holistically considered customer impacts of PSPS events.

c. Power Charge Indifference Adjustment (PCIA) – Voluntary Allocation & Market Offer (VAMO) Process

On May 20, 2021, the CPUC adopted D.21-05-003, which approved the VAMO process to allocate PCIA-eligible renewable energy to other LSEs, including MCE. The allocated renewable energy would come from an IOU's Renewable Portfolio Standard (RPS) resource pool that MCE customers pay for through the PCIA. The PCIA recovers above-market costs for procurement commitments made by IOUs before customers departed to other providers, like MCE. If PG&E can allocate or sell some of its excess RPS energy from its eligible resource pool to MCE, this may lower the PCIA and help MCE meet its renewable energy requirements.

On May 5, 2022, MCE Staff received authority from MCE's Technical Committee to: (a) determine whether to accept an allocation from PG&E; (b) elect a share from the short-

and long-term resource pools; and (c) enter into any necessary agreements to effectuate the allocation.

MCE has since received information on its voluntary allocation share and has been offered an allocation comprised of two resource pools: (1) a long-term pool with resources that have 10 years or more remaining on their contracts; and (2) a short-term pool with resources that have less than 10 years remaining on their contracts.

At this time, MCE has informed PG&E that, subject to final contract review and execution, it plans to participate in the voluntary allocation process. MCE plans to opt for short-term allocations only (allocations lasting through 2024), totaling approximately 974,000 MWh and 964,000 MWh in 2023 and 2024, respectively.

Staff will continue to monitor the development of the VAMO process and provide updates to the Board on the status of any elections as they become available.

III. California Energy Commission

a. Load Management Rulemaking

The 1974 Warren-Alquist Act, codified in Public Resource Code § 25403.5, grants the CEC authority to adopt Load Management Standards (LMS) management standards for California utilities.

On July 6, 2022, the California Energy Commission (CEC) released proposed regulatory language to amend its LMS. The CEC's stated goal of the amendments is to better facilitate electric load management activities through the establishment of cost-effective programs and rate structures, which encourage the use of electricity at off-peak hours and the control of peak loads to improve electric system efficiency and reliability, and to reduce fossil fuel consumption and greenhouse gas emissions.

If approved by the CEC, the proposed amendments to the LMS would require MCE to:

- 1) *Within three months of the effective date:* Upload and maintain all time-dependent rates in the CEC's Market Informed Demand Automation Server (MIDAS);
- 2) *Within six months of the effective date:* Submit a plan to comply with the amended standards to the CEC's Executive Director for review;
- 3) *Within one year of the effective date:* Work with utilities and other CCAs to develop a single statewide standard tool for rate data access by third parties;
- 4) *Within 18 months of the effective date:* Develop and submit a list of load flexibility programs deemed, by MCE, to be cost-effective. MCE's portfolio of programs must provide any customer with at least one option for automating response to dynamic rate signals;

- 5) *Within two years of the effective date:* Develop retail electricity rates that change at least hourly to reflect locational marginal costs, and submit those rates to MCE's Board for approval; and
- 6) *Within three years of the effective date:* Offer each of its customers voluntary participation in a marginal cost rate or a cost-effective program if such rate is not approved by the Board.

While MCE Staff is broadly supportive of the CEC's efforts to encourage the automation of flexible demand loads, improve grid reliability, and reduce greenhouse gas emissions, MCE has identified a potential jurisdictional overreach by the CEC in its draft regulations. The authority to set and approve rate schedules for MCE customers lies with MCE's Board of Directors. MCE Staff is concerned that the proposed regulatory language's mandate, which requires MCE to impose a specific rate design, infringes on MCE's Board of Directors' ability to set its own rates.

Staff has engaged both independently and with the California Community Choice Association (CalCCA) on prior iterations of the CEC's LMS regulatory language. Staff will continue to engage on this matter and plans to work with CalCCA to submit comments on the proposed regulations by July 21, 2022.

Staff notes that the proposed amendments are currently scheduled to be voted on by the CEC at its August 10, 2022, meeting. Staff will continue to monitor the development of the LMS rulemaking and provide updates to the Board as they become available.

Recommendation: Information only. No action required.