

Board of Directors Meeting  
Thursday, November 17, 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

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Resolution No. 2022-13 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code 54953(e) (Discussion/Action)
5. Report from Chief Executive Officer (Discussion)
6. Consent Calendar (Discussion/Action)
  - C.1 Approval of 10.20.22 Meeting Minutes
  - C.2 Approved Contracts For Energy Update

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C.3 Extension of Existing Revolving Credit Facility Agreement with JPMorgan Chase Bank

7. Proposed MCE Rate Adjustment Effective January 1<sup>st</sup>, 2023  
(Discussion/Action)
8. Resolution 2022-14 Amending MCE's Conflict of Interest Code  
(Discussion/Action)
9. Power Purchase Agreement with Humboldt House Geothermal LLC  
(Discussion/Action)
10. Electrification Reach Code Adoption Model (External Presentation by Brian Reyes, Sustainability Planner with County of Marin)  
(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 call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.



November 17, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: Resolution No. 2022-13 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. 2022-13 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)

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Dear MCE Board of Directors:

**Summary:**

Assembly Bill (AB) No. 361 (Rivas), signed by Governor Gavin Newsom on September 16, 2021, amends the Brown Act<sup>1</sup> to allow a local agency to continue using teleconferencing during a state-proclaimed state of emergency without meeting certain Brown Act teleconference requirements.

On October 20, 2022, the MCE Board of Directors, by Resolution 2022-12, made a continued finding that the Governor's designated state of emergency directly impacts the ability of Board Members to meet safely in person. This finding allowed for meetings to continue 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. The Board of Directors has reconsidered the circumstances of the state of emergency, as designated by the Governor.

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<sup>1</sup> Gov. Code, §§ 54950 et seq.

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. 2022-13 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. 2022-13 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. 2022-13**

### **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 Board of Directors previously adopted Resolution No. 2022-12 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 17th day of November 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				
City of St. Helena				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

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CHAIR, MCE

**Attest:**

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SECRETARY, MCE

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**MCE BOARD MEETING MINUTES**  
**Thursday, October 20, 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.

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**Present:** Bruce Ackerman, Alternate, Town of Fairfax  
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  
Kevin Haroff, City of Larkspur  
C. William Kircher, Town of Ross  
Aaron Meadows, City of Oakley  
Leila Mongan, Alternate, Town of Corte Madera  
Teresa Onoda, Town of Moraga  
Scott Perkins, City of San Ramon  
Max Perrey, City of Mill Valley  
Patricia Ponce, City of San Pablo  
Gabriel Quinto, City of El Cerrito  
Katie Rice, County of Marin  
Matt Rinn, City of Pleasant Hill  
Shanelle Scales-Preston, City of Pittsburg  
Christina Strawbridge, City of Benicia  
Holli Thier, Town of Tiburon  
John Vasquez, County of Solano  
Sally Wilkinson, City of Belvedere

**Absent:** Denise Athas, City of Novato  
John Gioia, Contra Costa County  
Ford Greene, Town of San Anselmo  
Maika Llorens Gulati, City of San Rafael  
Janelle Kellman, City of Sausalito  
Katy Miessner, City of Vallejo  
Devin Murphy, City of Pinole  
Doriss Panduro, City of Fairfield  
Brad Wagenknecht, County of Napa  
Brianne Zorn, City of Martinez



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**Staff**

**& Others:** Jessica Brooks, Assistant Board Clerk  
Jonnie Kipyator, Power Resources Manager  
Justin Kudo, Senior Strategic Analysis and Rates Manager  
David Potovsky, Principal Power Procurement Manager  
Evelyn Reyes, Internal Operations Coordinator  
Garth Salisbury, Chief Financial Officer & Treasurer  
Enyonam Senyo-Mensah, Office Manager  
Daniel Settlemyer, Internal Operations Coordinator  
Sabrinna Soldavini, Policy Analyst II  
Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Chair Butt called the regular meeting to order at 7:01 p.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were no comments.

**3. Public Open Time (Discussion)**

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

**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)**

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

Action: It was M/S/C (Perkins/ Thier) 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). Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Gioia, Greene, Gulati, Kellman, Miessner, Mongan, Murphy, Panduro, Rinn, Wagenknecht, Wilkinson, and Zorn).
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**5. Report from Chief Executive Officer (Discussion)**

CEO, Dawn Weisz, reported the following:

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- The first week of September marked the longest and hottest heat wave in California history resulting in 10 consecutive days of Flex Alert issued from the California Independent System Operator asking all Californians to conserve energy. A huge, coordinated statewide effort ensued to help prevent rolling power outages. Our staff work closely with the Governor's Office, CEC, CAISO, CPUC, and all other load serving entities including the IOUs and CCAs and here are some highlights of MCE's efforts.
  - Nearly 3,500 MCE customers reduced load through our Peak Flex program or smart EV charging program, MCE Sync.
  - We sent 2 emails to 302,000 customers (every customer with an email on file), asking them to conserve, and had an amazing 56% open rate.
  - Another 2 dozen personalized emails were sent to our largest commercial customers, local government staff, business and housing associations.
  - We also started airing our own TV commercial encouraging energy conservation from 4-9 p.m. the day before this Flex Alerts started.
- Despite record breaking demand on the grid and the threats and impacts of extreme heat, wildfire and weather, the grid continued to provide power. Thank you for helping us get the word out to conserve energy and keep the power on for everyone!
- On September 16, in Solano County, Governor Newsom signed a package of World-Leading Climate Action Legislation to enact some of the nation's most aggressive climate measures in history and the record \$54 billion climate investment included in this year's budget.
- The Governor's declared COVID-19 State of Emergency is set to end on February 28, 2023, which means the remote meeting requirements established by AB 361 will expire at the end of February.
  - Remote attendance after AB 361 expires will only be allowed based on the traditional noticing requirements of the Brown Act or complying with the new requirements of AB 2449, which goes into effect January 1.
  - Under AB 2449, remote participation is only allowed if a quorum of Board Members participate in-person at a single location and the remote participation is due to "just cause" or an "emergency situation".
  - Additionally, AB 2449 restricts how many meetings a Board Member may participate in remotely.
  - Complying with AB 2449 would impact MCE's ability to host meetings at both its Concord and San Rafael office locations.
  - MCE plans to bring this topic of discussion to a committee or Board Meeting in early 2023 for input on preferences for remote

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attendance under the original Brown Act requirements or the new requirements of AB 2449.

- We expect to hold our regularly scheduled board meeting in November and December.

**6. Consent Calendar (Discussion/Action)**

- C.1 Approval of 8.18.22 Meeting Minutes
- C.2 Approval of 9.29.22 Board Retreat Minutes
- C.3 Approved Contracts for Energy Update

Action: It was M/S/C (Birsan/Perkins) to **approve Consent Calendar items C.1, C.2 and C.3**. Motion carried by roll call vote. (Abstained: Director Ackerman  
Absent: Directors: Athas, Gioia, Greene, Gulati, Kellman, Miessner, Mongan, Murphy, Panduro, Rinn, Wagenknecht, Wilkinson, and Zorn).

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

**7. Addition of Board Members to Committees (Discussion/Action)**

Dawn Weisz, Chief Executive Officer, introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Perkins/Quinto) to **approve the addition of Director Perrey to the Executive Committee and the addition of Board Members to Committees in 2022: Directors: Butt, Dawson, Murphy, and Rice to the Ad Hoc Committee for VPP, and in 2023: Director Perkins to the Ad Hoc Contracts Committee and Director Wilkinson to the Ad Hoc Audit Committee**. Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Darling, Gioia, Greene, Gulati, Miessner, Murphy, Panduro, Kellman, Wagenknecht, Wilkinson, and Zorn).

**8. Approval of CPUC Integrated Resource Plan (Discussion/Action)**

Sabrinna Soldavini, Policy Analyst II and Jonnie Kipyator, Power Resources Manager, 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: It was M/S/C (Haroff/Strawbridge) to **approve MCE's 2022 CPUC Compliance IRP**. Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Gioia, Greene, Gulati, Miessner, Kellman, Murphy, Panduro, Wagenknecht, Wilkinson, and Zorn)

**9. Approval of Power Purchase Agreement with Mayacma Geothermal, LLC (Discussion/Action)**

David Potovsky, Principal Power Procurement Manager, introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Rice/Birsan) to **authorize execution of the Power Purchase Agreement with Mayacma Geothermal LLC for supply of bundled renewable energy and resource adequacy**. Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Gioia, Greene, Gulati, Kellman, Miessner, Murphy, Panduro, Wagenknecht, Wilkinson, and Zorn).

**10. Implementation of Electrification Rate Schedule E-ELEC (Discussion/Action)**

Justin Kudo, Senior Strategic Analysis and Rates Manager, introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Thier/Quinto) to **approve the implementation of MCE rates for the E-ELEC rate schedule effective December 1, 2022**. Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Gioia, Greene, Gulati, Haroff, Kellman, Miessner, Murphy, Panduro, Wagenknecht, Wilkinson, and Zorn).

**11. Proposed Amendments to MCE Policy 014: Investment Policy (Discussion/Action)**

Garth Salisbury, Chief Financial Officer & Treasurer, and Carlos Oblites, Senior Portfolio Strategist (Chandler Asset Management), introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and comments were made by member of the public, Daniel Segedin.

Action: It was M/S/C (Perkins/Thier) to **approve the proposed amendments to MCE Policy 014: Investment Policy**. Motion carried by unanimous roll call

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vote. (Absent: Directors: Athas, Birsan, Gioia, Greene, Gulati, Kellman, Miessner, Murphy, Panduro, Wagenknecht, and Zorn).

**12. Budget Update and Possible Rate Increase in FY 2022/23 (Discussion)**

Garth Salisbury, Chief Financial Officer & Treasurer, and Justin Kudo, Senior Strategic Analysis and Rates Manager, 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.

**13. Board Matters & Staff Matters (Discussion)**

There were no comments.

**14. Adjournment**

Chair Butt adjourned the meeting at 9:38 p.m. to the next scheduled Board Meeting on November 17, 2022

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Tom Butt, Chair

Attest:

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Dawn Weisz, Secretary



November 17, 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 October. 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	September, 2022	Sale of Resource Adequacy	\$1,275,000	Under 1 Year
2	September, 2022	Sale of Resource Adequacy	\$225,000	Under 1 Year
3	October, 2022	Purchase of System Energy (Hedge)	\$19,937,443	1-5 Years
4	October, 2022	Purchase of System Energy (Hedge)	\$16,164,880	1-5 Years
5	October, 2022	Purchase of System Energy (Hedge)	\$3,857,700	Under 1 Year
6	October, 2022	Purchase of Resource Adequacy	\$4,061,538	1-5 Years
7	October, 2022	Purchase of Resource Adequacy	\$3,100,000	Under 1 Year
8	October, 2022	Purchase of Import Resource Adequacy and Carbon Free Energy	\$5,415,000	1-5 Years
9	October, 2022	Purchase of System Energy (Hedge)	\$11,260,800	1-5 Years
10	October, 2022	Purchase of Resource Adequacy	\$172,000	Under 1 Year
11	October, 2022	Purchase of Renewable Energy	\$4,118,000	Over 5 Years
12	October, 2022	Purchase of Renewable Energy	\$762,500	Under 1 Year
13	October, 2022	Sale of Resource Adequacy	\$210,000	Under 1 Year
14	October, 2022	Sale of Resource Adequacy	\$1,071,000	Under 1 Year
15	October, 2022	Purchase of Resource Adequacy	\$475,000	Under 1 Year
16	October, 2022	Purchase of Resource Adequacy	\$1,100,000	Under 1 Year
17	October, 2022	Purchase of Carbon Allowance	\$160,366	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 (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Nathaniel Malcolm (Senior Policy Counsel)	Legal/CPUC Compliance
Garth Salisbury (Chief Financial Officer & Treasurer)	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.





November 17, 2022

TO: MCE Board of Directors

FROM: Vicken Kasarjian, Chief Operating Officer  
Maira Strauss, Manager of Finance

RE: Extension of Existing Revolving Credit Facility Agreement with JPMorgan Chase Bank (Agenda Item #06 C.3)

ATTACHMENTS: A. Resolution 2019-07 Approving and Authorizing the Execution and Delivery of a Revolving Credit Facility  
B. Revolving Credit Agreement dated November 29, 2019  
C. Fee Agreement of Revolving Credit Agreement dated November 29, 2019

Dear Board Members:

**Summary:**

On November 21, 2019, your Board approved and authorized the execution and delivery of a \$40,000,000 Revolving Credit Facility Agreement with JPMorgan Chase Bank, N.A via Resolution 2019-07 ("Credit Facility Agreement"). This Credit Facility Agreement expires on November 29, 2022.

MCE issued an RFO for a new credit facility on September 9, 2022 and is currently under negotiation with selected banks.

While Staff finalizes negotiations, Staff recommends an up to 6-month extension of the existing Credit Facility Agreement ("Extension"). The Extension would extend the Credit Facility Agreement up to May 2023. Staff anticipates taking to your Board an agreement with a new credit facility bank in early 2023 for review and approval.

**Fiscal Impacts:** Costs associated with the proposed Revolving Credit Facility Agreement extension through March 31, 2023 are included in the FY 2022/23 Budget. Cost associated with an extension beyond March 31, 2023 (if needed) will be included in the proposed FY 2023/24 Budget.

**Recommendation:**

Authorize MCE's CEO to execute an extension of the existing Revolving Credit Facility Agreement with JPMorgan Chase Bank, N.A.

**APPROVED**

**NOV 21 2019**

**RESOLUTION NO. 2019-07**

**MARIN CLEAN ENERGY**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY APPROVING AND AUTHORIZING  
THE EXECUTION AND DELIVERY OF A REVOLVING CREDIT AGREEMENT  
WITH JPMORGAN CHASE BANK, N.A.**

**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 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 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 Walnut Creek, and the Town of Yountville; and

**WHEREAS**, MCE has determined the need for a revolving line of credit to be used for general agency purposes and to provide credit support for future power purchase contracts; and

**WHEREAS**, MCE staff has negotiated the terms of a revolving line of credit with JPMorgan Chase Bank, N.A. (the "Revolving Credit Agreement"); and

**WHEREAS**, the Revolving Credit Agreement allows MCE to borrow cash or to direct the issuance of standby letters of credit in an aggregate principal amount not to exceed \$40,000,000, to be used for general corporate purposes or as credit support for MCE's forward purchases of energy; and

**WHEREAS**, the information required to be obtained and disclosed with respect to the Revolving Credit Agreement in accordance with Government Code Section 5852.1 is set forth in the report accompanying this Resolution.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of MCE that the Board hereby authorizes and approves:

(i) the execution and delivery of the Revolving Credit Agreement with JPMorgan Chase Bank, N.A. and any related, ancillary documents;

(ii) the Board Chair and Chief Operating Officer as authorized representatives of MCE ("Authorized Representatives");


(iii) the Authorized Representatives to execute and deliver the Revolving Credit Agreement and any such related, ancillary documents in substantially the same form presented to the Board of Directors of MCE, with such modifications as such Authorized Representatives shall approve as in the best interests of MCE; and

(iv) the Authorized Representatives to borrow and authorize advances or standby letters of credit from time to time under the Revolving Credit Agreement in such amounts as in their judgment should be borrowed and to execute and deliver any requests or other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of the Revolving Credit Agreement.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 21st day of November 2019, 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 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 San Ramon	✓			

	AYES	NOES	ABSTAIN	ABSENT
City of Richmond	✓			
Town of Ross	✓			
Town of San Anselmo	✓			
City of San Pablo	✓			
City of San Rafael	✓			
City of Sausalito				✓
City of St. Helena				✓
Town of Tiburon	✓			
City of Walnut Creek			✓	
Town of Yountville				✓

  
 CHAIR, MCE BOARD

ATTEST:

  
 SECRETARY, MCE BOARD

***EXECUTION COPY***

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**REVOLVING CREDIT AGREEMENT**

**Dated as of November 29, 2019,**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**JPMORGAN CHASE BANK, N.A.,  
as Lender**

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## EXHIBITS

Exhibit A – Form of Opinion of Chapman and Cutler LLP

Exhibit B – Form of Compliance Certificate

Exhibit C – Form of Borrowing Request

Exhibit D-1 – Form of Letter of Credit Request

Exhibit D-2 – Short Form Letter of Credit Application

Exhibit D-3 – Form of Continuing Agreement for Commercial and Standby Letters Of Credit



## **REVOLVING CREDIT AGREEMENT**

This **REVOLVING CREDIT AGREEMENT**, dated as of November 29, 2019 (together with all amendments and supplements hereafter, this “**Agreement**”) is by and between MARIN CLEAN ENERGY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “**Borrower**”), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the “**Lender**”).

### **WITNESSETH:**

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

Section 1.1 **Definitions.** As used in this Agreement:

“*Adjusted LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Annual Debt Service*” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) (i) in the case of Working Capital Loans, Reimbursement Loans, and other Parity Debt (comprising other working capital loans), the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt loans (comprising other working capital loans), during such Fiscal Year or other designated four fiscal quarter period by 3, and (ii) in the case of Revolving Credit Exposure (excluding therefrom Working Capital Loans and Reimbursement Loans), other Parity Debt (not comprising other working capital loans), and other Subordinate Debt the quotient obtained by dividing the average daily outstanding principal balance of the Revolving Credit Exposure (excluding therefrom Working Capital Loans and the Reimbursement Loans), other Parity Debt (not comprising other working capital loans), and other Subordinate Debt during such

Fiscal Year or other designated four fiscal quarter period by 10. Provided that, to the extent interest on any debt is subject to a Swap Contract, MCE shall treat such interest payments due on such debt as being equal to the net amount paid and received by MCE under such Swap Contract.

*“Anti-Corruption Laws”* means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

*“Applicable Law”* means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

*“Applicable Margin”* has the meaning set forth in the Fee Agreement.

*“Audited Financial Statements”* has the meaning set forth in Section 4.6.

*“Authorized Representative”* means an Authorized Representative of the Borrower, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by the Borrower and delivered to the Lender.

*“Availability Period”* means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

*“Bank Agreement”* means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Borrower secured by or payable from Revenues (including Net Revenues) on parity with, or subordinate to the payment of, the Obligations.

*“Banking Day”* means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

*“Base Rate”* means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.5% per annum, and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Base Rate Borrowing*”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Base Rate.

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Board*” means the Board of Directors of the Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making, conversion or continuation of a Loan.

“*Borrowing Request*” means a request by the Borrower for a Borrowing in accordance with Section 2.3 and in the form of Exhibit C hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“*Cash Collateral Loan*” means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower’s payment obligations under one or more PPAs or to make a termination payment under PPAs.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “*Change in Law*,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by the Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the commitment of the Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.8. The initial amount of the Commitment is \$40,000,000.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Consulting Engineer*” means the engineer, engineering firm or consulting firm retained from time to time by Borrower to provide independent analysis and planning advice regarding the business strategy and operations of Borrower.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debt Service Coverage Ratio*” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

“*Debt Service Coverage Ratio Notice*” has the meaning set forth in Section 5.1(q) hereof.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” has the meaning set forth in the Fee Agreement.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*dollars*” or “*\$*” refers to lawful money of the United States of America.

“*Electronic Signature*” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“*Employee Plan*” means an employee benefit plan covered by Title W of ERISA and maintained for employees of the Borrower.

“*Environmental Laws*” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Eurodollar*” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“*Event of Default*” has the meaning set forth in Section 6.1 hereof.

“*Excluded Taxes*” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“*Fee Agreement*” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented and amended from time to time.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*Fitch*” means Fitch Ratings, Inc.

“*FRB Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“*Governmental Approval*” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Impacted Interest Period*” has the meaning assigned to it in the definition of “*LIBO Rate*.”

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“*Interest Election Request*” means a request by the Borrower to convert or continue a Revolving Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“*Interest Payment Date*” means, (a) with respect to any Base Rate Loan, the first Business Day of the month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part.

“*Interest Period*” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding

Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

*“Interpolated Rate”* means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Lender (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.

*“Investment Policy”* means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

*“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 the Joint Powers Agreement of Borrower effective as of December 19, 2008, and as amended from time to time.

*“Law”* means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

*“LC Disbursement”* means a payment made by the Lender pursuant to a Letter of Credit.

*“LC Exposure”* means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

*“Letter of Credit”* means any letter of credit issued pursuant to this Agreement.

*“Letter of Credit Fees”* has the meaning set forth in the Fee Agreement.

*“Lender”* has the meaning set forth in the introductory paragraph hereof.

*“LIBO Rate”* means, with respect to any Eurodollar Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an *“Impacted Interest Period”*) then the LIBO Rate shall be the Interpolated Rate.

“*LIBO Screen Rate*” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement).

“*Lien*” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Cash Collateral Loans, the Working Capital Loans and the Reimbursement Loans.

“*Material Adverse Change*” means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, calls into question the Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on the third anniversary of the Closing Date (*i.e.*, November 29, 2022), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

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



“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date.

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Banking Day, for the immediately preceding Banking Day); provided that if none of such rates are published for any day that is a Business Day, the term “*NYFRB Rate*” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Obligations*” means all obligations of the Borrower to the Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including repayment of Loans, the Undrawn Fee, the Letter of Credit Fees and LC Disbursements.

“*Operating and Maintenance Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“*Operating Reserve*” means a reserve fund established by the Borrower to provide a reserve that can be utilized by the Borrower to pay Operating and Maintenance Costs (including power costs) when Revenues are insufficient.

“*Operating Reserve Requirement*” means, for any Fiscal Year of the Borrower, an amount equal to the Commitment Amount hereunder.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest

under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

*“Other Taxes”* means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

*“Overnight Lender Funding Rate”* means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Banking Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

*“Parity Debt”* means any System Debt issued or incurred by the Borrower the payment of which is on parity with the Borrower’s payment Obligations under this Agreement.

*“Participant”* has the meaning set forth in Section 7.3(b) hereof. *“Participation”* has the meaning set forth in Section 7.3(b) hereof.

*“Person”* means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

*“PPA”* means a power purchase agreement executed between the Borrower and a PPA Counterparty.

*“PPA Counterparty”* means a party to a PPA other than the Borrower.

*“Prime Rate”* means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

*“Rating Agency”* and *“Rating Agencies”* means, individually or collectively, as applicable, any nationally recognized rating agency (such as Fitch, Moody’s and S&P) that is rating any long-term unenhanced System Debt.

“*RCB Obligations*” means all obligations due and owing to River City Bank pursuant to the Non-Revolving Credit Agreement dated as of August 21, 2015, between Borrower and Lender, as amended by the First Amendment to Non-Revolving Credit Agreement dated as of March 17, 2016, the Second Amendment to Credit Agreement dated as of May 19, 2016, and the Third Amendment to Credit Agreement dated as of July 20, 2017.

“*Reimbursement Loan*” has the meaning assigned to such term in Section 2.4(d).

“*Reimbursement Loan Amortization Payment Amount*” means, with respect to a Reimbursement Loan, the principal amount of such Reimbursement Loan on the applicable Reimbursement Loan Start Date divided by the number of Reimbursement Loan Payment Dates in the applicable Reimbursement Loan Amortization Period.

“*Reimbursement Loan Amortization Period*” means, with respect to a Reimbursement Loan, the period commencing on the applicable Reimbursement Loan Start Date and ending on the applicable Reimbursement Loan Maturity Date.

“*Reimbursement Loan Maturity Date*” means, with respect to a Reimbursement Loan, the earlier of (i) the second anniversary of the applicable Reimbursement Loan Start Date and (ii) the Maturity Date.

“*Reimbursement Loan Payment Date*” means, with respect to a Reimbursement Loan, the first Business Day of each calendar quarter during the applicable Reimbursement Loan Amortization Period and the Reimbursement Loan Maturity Date.

“*Reimbursement Loan Start Date*” means, with respect to a Reimbursement Loan, the date such Reimbursement Loan is made.

“*Reimbursement Obligations*” means any and all obligations of the Borrower to reimburse the Lender for LC Disbursements under Letters of Credit and all obligations to repay the Lender for any Loan, including in each instance all interest accrued thereon.

“*Related Parties*” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“*Reserve Funds Notice*” has the meaning set forth in Section 5.1(r) hereof.

“*Revenues*” means all revenues, rates and charges received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“*Revolving Borrowing*” means a Loan hereunder other than for a Letter of Credit.

“*Revolving Credit Exposure*” means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“*Sanction(s)*” means any and all economic sanctions administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full of the Borrower’s payment Obligations under this Agreement.

“*State*” means the State of California.

“*Statutory Reserve Rate*” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB Board to which the Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “*Eurocurrency Liabilities*” in Regulation D of the FRB Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“*Subordinate Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is expressly subordinate to the payment in full of the Borrower’s payment Obligations under this Agreement and under any other Parity Debt.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and

termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*System Debt*” means Debt of the Borrower secured by a Lien over Revenues, including Net Revenues.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*2019 Audited Financial Statements*” means the statements of net position of the System at March 31, 2019 and March 31, 2018, the statements of revenues, expenses and changes in net position of the System for the years ended March 31, 2019 and March 31, 2018, and the statements of cash flows of the System for the years ended March 31, 2019 and March 31, 2018, together with unqualified audit opinion of Baker Tilly.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

The LIBO Rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. The regulatory authority that oversees financial services firms and financial markets in the U.K. has announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions for purposes of determining the LIBO Rate. As a result, it is possible that commencing in 2022, the LIBO Rate may no longer be available or no longer deemed an appropriate reference rate upon which to determine the interest rate on your loan. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the LIBO Rate. In the event the LIBO Rate is no longer available or no

longer deemed an appropriate reference rate, we will inform you of such occurrence and will endeavor to establish an alternate rate of interest to the LIBO Rate. There is no assurance that the composition or characteristics of any such alternative reference rate will be similar to or produce the same value or economic equivalence as the LIBO Rate or that it will have the same volume or liquidity as did the LIBO Rate prior to its discontinuance or unavailability.

Section 1.2 **Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3 **Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

## ARTICLE 2

### THE CREDITS

Section 2.1 **Commitments.** Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.2 **Loans and Borrowings.**

(a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan or a Eurodollar Loan.

(b) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$1,000,000. At the time that each Base Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; provided that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d).

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.3 **Requests for Revolving Borrowings.** To request a Borrowing, the Borrower shall notify the Lender of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, two Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by electronic means to the Lender of a written Borrowing Request in a form attached hereto as Exhibit C and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit C hereto.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Lender shall make available to, or for the account of, the Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on the applicable Borrowing date.

## Section 2.4 **Letters of Credit.**

(a) **General.** Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, in the form of a Letter of Credit Request set forth in Exhibit D-1 hereto at any time and from time to time during the Availability Period; *provided, however*, that prior to the issuance of the initial Letter of Credit hereunder, the Borrower and the Lender shall execute a Continuing Agreement for Commercial and Standby Letters Of Credit in the form of Exhibit D-3 hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such

funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

(c) Expiration Date. Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five Business Days prior to the Maturity Date.

(d) Reimbursement. If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$100,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with a Base Rate Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Base Rate Borrowing (such Base Rate Borrowing, a "***Reimbursement Loan***").

(e) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a



Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly notify the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) If the Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for Base Rate Loans and such interest shall be due and payable on the date when such reimbursement is payable.

## Section 2.5 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as

provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by electronic copy to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “*Interest Period*”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto; provided, however, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

## Section 2.6 **Termination and Reduction of Commitment.**

(a) Unless previously terminated, the Commitment shall terminate on the Maturity Date.

(b) Subject to the provisions of the Fee Letter, the Borrower may at any time terminate, or from time to time reduce, the Commitment; provided that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposure would exceed the Commitment.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

#### Section 2.7 **Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan (other than a Reimbursement Loan) on the Maturity Date. The Borrower hereby unconditionally promises to pay to the Lender with respect to each Reimbursement Loan the Reimbursement Loan Amortization Payment Amount for such Reimbursement Loan on each applicable Reimbursement Loan Payment Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

#### Section 2.8 **Prepayment of Loans.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and in accordance with any amounts due and owing pursuant to Section 2.13 of this Agreement.

(b) The Borrower shall notify the Lender by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

Section 2.9 **Fees**. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and the Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10 **Interest**.

(a) The Loans comprising each Base Rate Borrowing (other than Reimbursement Loans) shall bear interest at the Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) The Reimbursement Loans shall bear interest at the Base Rate plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 3% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be

payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

#### Section 2.11 **Alternate Rate of Interest.**

(a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Lender determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period, or (ii) the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loan included in such Borrowing for such Interest Period; then the Lender shall give notice thereof to the Borrower by telephone or telecopy as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing.

(b) If at any time the Lender determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Lender has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for

loans, then the Lender and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.11(b), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, or (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

#### Section 2.12 **Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered. If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or the Letters of Credit issued by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(b) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(c) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 2.13 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

**Section 2.14 Payments Free of Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under

this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 30 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "applicable law" includes FATCA.



**Section 2.15 Payments Generally.**

(a) The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

**Section 2.16 Mitigation Obligation.** If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

**Section 2.17 Extension of Maturity Date.** The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); provided, however, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18 **Pledge; Security of Obligations.** The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues.

### ARTICLE 3

#### CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Effectiveness.** The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Lender has received an opinion of Chapman and Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* (i) The Lender has received executed copies of the Basic Documents executed by the Borrower on or prior to the Closing Date certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date. (ii) The Lender has received a certified copy of the Joint Powers Agreement, including a FTB certificate or related state certification of the Borrower's status.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of the Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Borrower, the result of which could have a Material Adverse Effect on the business, operations or condition (financial or otherwise) of the Borrower or its ability to perform its obligations under the Basic Documents.

(e) *No Material Adverse Change.* Since the date of the 2019 Audited Financial Statements, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of the Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which

would be to prevent the Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees; Existing RCB Obligations.* The Lender has received all fees and expenses due and payable to the Lender and/or its legal counsel pursuant to the Fee Agreement. All Existing RCB Obligations shall have been paid in full in immediately available funds on or before the Closing Date, and such RCB Obligations and the documents thereto shall be terminated to the satisfaction of the Lender.

(h) *Financial Statements.* The Lender has received the 2019 Audited Financial Statements, internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end, if not previously provided.

(i) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by this Agreement as the Lender may have requested.

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

Section 3.2 **Conditions Precedent to Each Credit Event.** The obligation of the Lender to make a Loan on the occasion of any Borrowing, and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Solely with respect to the issuance of the initial Loan or Letter of Credit hereunder, that the Borrower shall have filed the necessary notices and filings with and provided for payment to the California Debt Issuance Advisory Commission related thereto.

(b) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(d) It has provided the Lender with a completed Borrowing Request substantially in the form of Exhibit C hereto or a Letter of Credit Request substantially in the form of Exhibit D-1 hereto, as applicable.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans and issue the Letters of Credit, the Borrower represents and warrants to the Lender as follows:

Section 4.1 **Organization, Powers, Etc.** The Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a Material Adverse Effect on its business, operations or assets. The Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of the Borrower as are contemplated by the Basic Documents.

Section 4.2 **Authorization, Absence of Conflicts, Etc.** The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which violation would result in a Material Adverse Effect on the System and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect on the System.

Section 4.3 **Binding Obligations.** The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4 **Governmental Consent or Approval.** No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.5 **Absence of Material Litigation.** There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Change in the financial condition, operations or prospects of the System, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “*Material Litigation*”).

Section 4.6 **Financial Condition.** The most recent audited financial statements of the System delivered (or deemed delivered) to the Lender (the “*Audited Financial Statements*”) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to the Lender were prepared on a consistent basis and, unless otherwise specified in Schedule 5.1(a), in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since the date of the most recent Audited Financial Statements delivered to the Lender, no Material Adverse Change has occurred in the business, operations or condition (financial or otherwise) of the System.

Section 4.7 **Incorporation of Representations and Warranties.** The representations and warranties of the Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Lender.

Section 4.8 **Accuracy and Completeness of Information.** The Basic Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent

necessary to give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

**Section 4.9 No Default.**

(a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

**Section 4.10 No Proposed Legal Changes.** There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to perform its obligations under the Basic Documents.

**Section 4.11 Compliance with Laws, Etc.** The Borrower is in compliance with the Investment Policy and all Laws applicable to the Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect on the security for the obligations under this Agreement and the Fee Agreement or the validity and enforceability of the Basic Documents. In addition, no benefit plan maintained by the Borrower for its employees is subject to the provisions of ERISA, and the Borrower is in compliance with all Laws in respect of each such benefit plan.

**Section 4.12 Environmental Matters.** In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that Environmental Laws are likely to have a Material Adverse Effect on the ability of the Borrower to perform its obligations under the Basic Documents.

**Section 4.13 Regulation U.** The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

**Section 4.14 Liens.** This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower’s obligations under this

Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt, Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. There is no pledge of or Lien on Net Revenues that ranks senior to the obligations hereunder or under the Fee Letter.

Section 4.15 **Sovereign Immunity**. The Borrower is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

Section 4.16 **Usury**. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17 **Insurance**. As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18 **ERISA**. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19 **Sanctions Concerns and Anti-Corruption Laws**.

(a) Neither the Borrower, nor, to the knowledge of the Borrower, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Borrower and its respective officers and employees and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar Anti-Corruption Laws in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

Section 4.20 **System Debt**. The Borrower has not incurred or issued any System Debt other than the System Debt, if any, incurred or issued in accordance with Section 5.2(j).

## ARTICLE 5

### COVENANTS

Section 5.1 **Affirmative Covenants**. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without

any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within sixty (60) days after the close of each quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, the Borrower shall provide the Lender its annual budget; and

(vi) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, and such compliance



certificate shall also include the Debt Service Coverage Ratio test required by Section 5.1(q) hereof and the amount set forth in the Operating Reserve.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower and the other assets of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) The Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any action referred to in this subparagraph (i).

(ii) The Borrower covenants that it will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal power systems of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the System in an efficient and economical manner and shall not commit or allow any waste with respect to the System.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws) and material to the Basic Documents. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

(g) *Notices.* The Borrower shall promptly give notice to the Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of the Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies ("**Improved Provisions**," which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any "default" or "event of default" or "termination event" under any Basic Document (other than this Agreement and the Fee Agreement) or any Other Revenue Document, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other System Debt which are not restricted or prohibited from being shared with the Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof, (iv) notice of any proposed substitution of any Letter of Credit, and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect on the Borrower's ability to perform its obligations under the Basic

Documents or to result in a Material Adverse Effect on the enforceability or validity of any Basic Document.

(k) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; provided, however, that the Borrower may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker's compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers' compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be fair and nondiscriminatory and adequate to provide the Borrower on a projected basis with Revenues in each Fiscal Year sufficient to (i) pay, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year and (ii) maintain on a historical and projected basis a Debt Service Coverage Ratio of not less than 1.10 for each Fiscal Year.

(n) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to the Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, the Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Rating and Rating Change.* The Borrower shall at all times maintain one rating with a Rating Agency. The Borrower shall use its best efforts to notify the Lender as soon as practicable of any issuance, downgrade, suspension or withdrawal in rating of any System Debt.

(q) *Debt Service Coverage.* The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.10 for each fiscal quarter of the Borrower, commencing with the fiscal quarter ended September 30, 2019. The Debt Service Coverage Ratio shall be tested on a rolling last twelve month basis and forward for the following twelve months as of the last day of each fiscal quarter commencing with the fiscal quarter ended September 30, 2019. The Borrower shall determine the Debt Service Coverage Ratio at each fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than the forty-five calendar days following the end of such fiscal quarter (each such notice, a “**Debt Service Coverage Ratio Notice**”).

(r) *Operating Reserve.* The Borrower shall maintain the Operating Reserve with unrestricted cash and investments at the Operating Reserve Fund Requirement level at all times that amounts are due and owing to the Lender hereunder. The Borrower shall withdraw amounts from the Operating Reserve to pay Operating and Maintenance Costs, Obligations and debt service on, and fees associated with, other Parity Debt.

Section 5.2 **Negative Covenants.** Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues (other than Parity Debt or Subordinate Debt permitted by this Agreement); or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by this Agreement and Liens created or permitted by any other agreement or instrument evidencing Parity Debt or Subordinate Debt.

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Borrower under any Basic Document or the transactions contemplated thereby.

(g) *System.* Construct, operate or maintain any system or utility competitive with the System. The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the System to pay the fees, rates and charges applicable to the services and facilities furnished by the System. The Borrower shall not provide any service of the System free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the System with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion to the Lender.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Borrower's obligations under PPAs. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Borrower's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement, (iii) for general corporate purposes, or (iv) capital expenditures related to the development or acquisition of new assets related to the System subject to prior written approval by the Lender, which such approval shall not be unreasonably be withheld. For the avoidance of doubt, Loan Proceeds may not be used for other long-term expenditures or for funding the Operating Reserve. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(j) *System Debt.*

(i) Not issue, incur or assume to exist any Senior Debt or any other Debt other than (A) Parity Debt described in clause (ii) below; and (B) Subordinate Debt described in clause (iii) below;

(ii) Not issue, incur or assume to exist any Parity Debt except for: (A) the Obligations, and (B) Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(2) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement, the Ordinances or any other resolutions or ordinances adopted by the Borrower;

(3) the Operating Reserve is fully funded immediately prior to the issuance or incurrence of such Parity Debt; and

(4) compliance by the Borrower with either (A) or (B) below:

(A) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Parity Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.30 times the Annual Debt Service for such period; or

(B) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth Net Revenues for the projected twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions), and (iii) demonstrating that Net Revenues for the projected twelve month period were at least equal to 1.30 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the projected twelve month period as set forth in the foregoing clause (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt;

(iii) Not issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(2) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement or any other resolutions or ordinances adopted by the Borrower;

(3) the Operating Reserve is fully funded immediately prior to the issuance or incurrence of such Subordinate Debt or will be fully funded after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(4) compliance by the Borrower with either (A) or (B) below:

(A) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth Annual Debt Service for the preceding twelve month period (inclusive of any additional Subordinate Debt in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.20 times the Annual Debt Service for such period; or

(B) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth Net Revenues for the projected twelve month period (in reasonable detail and with reasonable assumptions), (ii) setting forth projected Annual Debt Service (inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions), and (iii) demonstrating that Net Revenues for the projected twelve month period are at least equal to 1.20 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the projected twelve month period as set forth in the foregoing clause (i) and (iii), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional debt.

(k) *Excess Revenues*. Not use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt; (iv) funding and replenishment of the Operating Reserve; (v) so long as no Event of Default has occurred and is continuing, payment of interest on, and fees associated with, other Subordinate Debt; (vii) capital expenditures in connection with assets that will become part of the System; (viii) rebates to System customers; and (ix) any other lawful purpose that inures to the direct benefit of the System.

## ARTICLE 6

### DEFAULTS

Section 6.1 **Events of Default and Remedies**. If any of the following events occurs, each such event will be an “*Event of Default*”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) any Reimbursement Obligation or (ii) any Obligation (other than a Reimbursement Obligation) hereunder or under the Fee Agreement and, in such case, such failure continues for three (3) Business Days.

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(c), 5.1(d), 5.1(g), 5.1(k), 5.1(l), 5.1(m), 5.1(q), or 5.2 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or



enforceability of any obligation to pay System Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to System Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, provided in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt;

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$10,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(l) if any rating on any System Debt (i) is downgraded below “investment grade” (i.e., “BBB-”/“Baa3”) or (ii) is suspended or withdrawn;

(m) the passage of any Law has occurred which could reasonably be expected to (i) have a Material Adverse Effect on the ability of community choice aggregators to operate within the State, (ii) have a Material Adverse Effect on the Borrower’s ability to perform its obligations under this Agreement or the other Basic Documents or (iii) result in a Material Adverse Effect on the enforceability or validity of this Agreement or any of the other Basic Documents.

**Section 6.2 Remedies.** Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 **Amendments, Waivers, Etc.** No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2 **Notices.** All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, California 94901  
Attention: Vicken Kasarjian, Chief Operating Officer  
Telephone: (415) 464-6659  
Facsimile:

with a copy to:

Chapman and Cutler LLP  
1270 Avenue of the Americas, 30th Floor  
New York, New York 10020  
Attention: Douglas A. Bird  
Telephone: (212) 655-2519

(b) if to the Lender:

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: Allyson Goetschius or Janice Fong  
Telephone: (212) 270-0335 or (212) 270-3762  
Facsimile: (917) 849-0272  
Email: [Allyson.l.goetschius@jpmorgan.com](mailto:Allyson.l.goetschius@jpmorgan.com) or  
[Janice.r.fong@jpmorgan.com](mailto:Janice.r.fong@jpmorgan.com)

and

Attention: Brandon Allen  
Telephone: (302) 634-9588

Facsimile: (302) 634-4733  
Email: [12012443628@tls.ldsprod.com](mailto:12012443628@tls.ldsprod.com)

with a copy to:

JPMorgan Chase Bank, National Association  
JPM-Delaware Loan Operations  
500 Stanton Christiana Road, NCCS, Floor 01  
Newark, Delaware 19713  
Attention: Brandon Allen  
Telephone: (302) 634-9588  
Telecopy: (302) 634-4733

And, for compliance-related items, with a copy to:  
[public.finance.notices@jpmchase.com](mailto:public.finance.notices@jpmchase.com)

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that requests for LC Disbursements submitted to the Lender will not be effective until received by the Lender.

### Section 7.3 **Survival of Covenants; Successors and Assigns.**

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Letter with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably), provided that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a “**Participant**”) a participation or participations in all or any part of the Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “**Participation**”) without the consent of the Borrower. In the event of any such grant by the Lender

of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; provided that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and provided, further, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.4     **Reserved.**

Section 7.5     **Liability of Lender; Indemnification.**

(a) To the extent permitted by the law of the State, the Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; provided that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Lender.

(b) To the extent permitted by the law of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; provided that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.6 **Expenses.** Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (provided that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.7 **No Waiver; Conflict.** Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.8 **Modification, Amendment Waiver, Etc.** No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9 **Dealings.** The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower and/or any PPA Counterparty regardless of the capacity of the Lender hereunder or under any Letter of Credit.

Section 7.10 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Lender to accept electronic signatures in any form or format without its prior written consent.

Section 7.12 **Table of Contents; Headings**. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13 **Entire Agreement**. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14 **Governing Law Waiver of Jury Trial**.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); PROVIDED, THAT THE OBLIGATIONS OF THE BORROWER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15 **Governmental Regulations.** The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“**OFAC**”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of LC Disbursements under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Lender Secrecy Act laws and regulations, as amended.

Section 7.16 **USA PATRIOT Act.** The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.17 **Electronic Transmissions.** The Lender is authorized to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission,

including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

Section 7.18 **Assignment to Federal Reserve Bank.** The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.19 **[Reserved].**

Section 7.20 **Arm's Length Transaction.** The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (i.e., as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Lender is not recommending that the Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[Signature Pages Follow]



IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

MARIN CLEAN ENERGY

By: 

Name: Vicken Kasarjian

Title: Chief Operating Officer

By: 

Name: Kathrin Sears

Title: Chair MCE Board

JPMORGAN CHASE BANK, N.A.

By: Allyson Goetschius  
Name: Allyson Goetschius  
Title: Executive Director

**EXHIBIT A**  
**FORM OF OPINION OF CHAPMAN AND CUTLER LLP**

November 29, 2019

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, California 94901

Re: Marin Clean Energy and JPMorgan Chase Bank, N.A. – Revolving Credit Agreement  
and Fee Agreement

Ladies and Gentlemen:

We have acted as special counsel to Marin Clean Energy, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“MCE”), in connection with:

(i) the Revolving Credit Agreement, dated as of November 29, 2019 (the “Revolving Credit Agreement”) and the Fee Agreement, dated November 29, 2019 (the “Fee Agreement” and together with the Revolving Credit Agreement, the “Loan Documents”) each between MCE, as borrower, and JPMorgan Chase Bank, N.A., as lender (the “Lender”);

In connection with this opinion, we have examined, among other documents, copies of the Loan Documents and the following additional documents, instruments and agreements, each in the form executed as of the dates set forth below:

(a) the Joint Powers Agreement of MCE, effective as of December 19, 2008, as amended;

(b) Resolution No. [\_\_\_\_ - \_\_\_\_], adopted by MCE on November [\_\_\_\_], 2019;

(c) [Investment Policy (Policy 014) of MCE];

(d) [FTB certificate or related state certification] of MCE’s status, dated November [\_\_\_\_], 2019; and

(e) [\_\_\_\_\_].

Subject to the assumptions and qualifications contained herein, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of MCE, agreements and such other instruments and certificates of public or governmental officials and of officers and representatives of MCE, and made such investigations of law, as we have deemed necessary or appropriate as a basis for the opinions expressed below. We have relied as to factual matters upon representations of officers and representatives of MCE, including the representations of MCE in the Loan Documents. We have not independently investigated or verified the facts represented and do not opine as to the accuracy of any such facts.

In rendering the following opinions, we have assumed, without investigation, the authenticity of any document or instrument submitted to us as original, the conformity to the originals of any document or instrument submitted to us as a copy, the authenticity of the originals of such latter documents, the legal capacity of natural persons and the genuineness of all signatures on such originals or copies, and that all documents executed by a party other than MCE were duly and validly authorized, executed and delivered by such party and are the legal, valid and binding obligations of such party enforceable against such party in accordance with their respective terms.

We have further assumed that the Loan Documents accurately reflect the intent and business purposes of the parties thereto and the complete understanding of the parties thereto with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder. The terms and conditions of the transactions described in the Loan Documents have not been amended, modified or supplemented by any (a) other agreement, negotiations or understanding of the parties thereto or (b) waiver of any of the material provisions of the Loan Documents.

We have assumed that the Lender has complied with all legal requirements pertaining to its status as such status relates to its power to enter into and make advances under the Loan Documents and enforce its remedies under the Loan Documents. In addition, we have assumed the Lender is either exempt from or has complied with all state and federal laws and regulations applicable to it as a result of entering into and making advances under the Loan Documents. Further, we have assumed the Lender (a) is a person exempt from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon a loan or forbearance, and (b) has no present intent to transfer the Loan Documents to a person or entity that is not exempt from the usury laws of the State of California. Finally, we have assumed that all of the conditions to, and all of the requirements for, the effectiveness of the Loan Documents have been satisfied or waived.

Where statements in this opinion are qualified by the term “material” or “materially,” those statements involve judgments and opinions as to the materiality or lack of materiality of any matter to MCE’s business, assets, results of operations or financial condition that are entirely those of MCE and its officers.

Members of our firm involved in the preparation of this opinion are licensed to practice law in the State of California and, in rendering the following opinions, do not purport to be experts on, or to express an opinion herein concerning, any law other than (i) the law of the State of

California and (ii) the federal law of the United States, in each case, as in effect on the date hereof and in our experience as are normally applicable to the transactions of the type contemplated by the Loan Documents (the foregoing laws, subject to the exceptions and qualifications herein, are referred to herein collectively as the “Applicable Laws”). We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any jurisdiction other than those identified above are applicable to the Loan Documents or the transactions contemplated thereby.

We express no opinion herein with respect to any document, instrument or agreement other than the Loan Documents.

Based upon and subject to the foregoing and the other assumptions and qualifications hereinafter contained, we are of the opinion that the Loan Documents constitute the legal, valid and binding obligations of MCE, enforceable against MCE in accordance with their terms.

This opinion is qualified by, and we render no opinion with respect to, the following:

(i) We express no opinion as to the effect of bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the relief of debtors or the rights and remedies of creditors generally, including without limitation the effect of statutory or other law regarding fraudulent conveyances, preferential transfers and equitable subordination;

(ii) Our opinions are qualified by the limitations imposed by general principles of equity upon the availability of equitable remedies for the enforcement of provisions of any of the Loan Documents, and by the effect of judicial decisions which have held that certain provisions are unenforceable when their enforcement would violate the implied covenant of good faith and fair dealing, or would be commercially unreasonable, or where their breach is not material;

(iii) We express no opinion as to the effect of Section 1670.5 of the California Civil Code or any other California law or equitable principle which provides that a court may refuse to enforce, or may limit the application of, a contract or any clause thereof which the court finds to have been unconscionable at the time it was made or contrary to public policy;

(iv) We express no opinion as to the enforceability of provisions of any of the Loan Documents expressly or by implication waiving broadly or vaguely stated rights or unknown future rights, or waiving rights granted by law where such waivers are against public policy;

(v) We express no opinion as to the enforceability of any provision of any of the Loan Documents purporting to (a) waive rights to trial by jury, service of process or objections to the laying of venue or to forum in connection with any litigation arising out of or pertaining to any of the Loan Documents, (b) exclude conflict of law principles under California law, (c) establish particular courts as the forum for the adjudication of any controversy relating to any of the Loan Documents or (d) establish the laws of any particular state or jurisdiction for the adjudication of any controversy relating to any of the Loan Documents;

(vi) We express no opinion as to the effect of judicial decisions that may permit the introduction of extrinsic evidence to modify the terms or the interpretation of any of the Loan Documents;

(vii) We express no opinion as to the enforceability of any provisions of any of the Loan Documents providing that (a) rights or remedies are not exclusive, (b) rights or remedies may be exercised without notice, (c) every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, (d) the election of a particular remedy or remedies does not preclude recourse to one or more other remedies or (e) the failure to exercise, or any delay in exercising, rights or remedies available under any of the Loan Documents will not operate as a waiver of any such right or remedy;

(viii) We note that a requirement that provisions of any of the Loan Documents may only be waived in writing may not be binding or enforceable if an oral agreement has been created modifying any such provision or an implied agreement by trade practice or course of conduct has given rise to a waiver;

(ix) We express no opinion as to any provision of the Loan Documents which provides for indemnification, contribution, waiver or release to the extent such provision may be limited or rendered unenforceable, in whole or in part, by applicable federal or state securities laws, criminal statutes, or the policies underlying such laws and by the effect of general rules of contract law that limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification for liability for action or inaction, to the extent the action or inaction involves negligence, gross negligence, recklessness, willful misconduct or unlawful conduct of any person to be indemnified, exculpated, released, or exempted, or waivers of unmatured claims or rights;

(x) We express no opinion as to the creation, attachment, priority, enforceability or perfection of any security interest, including, without limitation, any security interest in the Debt Service Reserve Account or any security interest created by the Assignment; and

(xi) The opinions expressed herein are subject to the qualification that actions taken or determinations made by the parties to the Loan Documents be taken in good faith and be reasonable in view of the circumstances.

Our opinions expressed herein are rendered as of the date hereof and do not address the passage of time or other events subsequent to the date hereof. We disclaim any undertaking to advise you of any change in law or fact which may affect the continued correctness of any opinion as of a later date.

No opinion expressed herein may be cited, quoted or otherwise referenced in any financial statement, prospectus, private placement memorandum or other similar document, nor may copies of this opinion be delivered to any person other than the addressees hereto, without our prior written consent.

The addressees hereto may rely on the opinions expressed herein (subject to the assumptions and qualifications set forth herein) only in connection with the transactions

contemplated by the Loan Documents. No other person may rely on the opinions expressed herein for any purpose without our prior written consent. This opinion is not to be filed with any governmental agency or other person or entity without our prior written consent.]

Very truly yours,

CHAPMAN AND CUTLER LLP

## EXHIBIT B

### FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “***Certificate***”) is furnished to JPMorgan Chase Bank, N.A. (including its successors and assigns, the “***Lender***”) pursuant to the Revolving Credit Agreement, dated as of November 29, 2019 (together with all amendments and supplements thereto, the “***Agreement***”), by and between the Marin Clean Energy (including its successors and assigns, the “***Borrower***”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

#### THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Marin Clean Energy System in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

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5. [The Debt Service Coverage Test Calculation] pursuant to Section 5.1(q).

6. Amounts held in the Operating Reserve are as follows: \$\_\_\_\_\_.

*[Remainder of page intentionally left blank]*



The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MARIN CLEAN ENERGY

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**EXHIBIT C**  
**FORM OF BORROWING REQUEST**

\_\_, 20\_\_

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: \_\_\_\_\_

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of November 29, 2019 (together with any amendments or supplements thereto, the “**Agreement**”), by and between Marin Clean Energy (with its successors and assigns, the “**Borrower**”) and JPMorgan Chase Bank, N.A. (with its successors and assigns, the “**Lender**”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the “**Proposed Loan**”):

1. The Business Day of the Proposed Loan] is \_\_\_\_\_, 20\_\_ (the “**Issuance Date**”).

2. The principal amount of the Proposed Loan is \$\_\_\_\_\_, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

3. The interest rate with respect to the Proposed Loan shall be a [Base Rate Loan\*][Eurodollar Loan][.][;][IN THE CASE OF AN EURODOLLAR BORROWING] the initial Interest Period shall be for [one month][three months].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing; and

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower's ability to receive Revenues or its ability to perform its obligations under the Agreement or the other Basic Documents.

5. The proceeds for Proposed Loan are being used for the following purposes:

(a) To provide cash collateral to secure the Borrower's obligations under PPAs, (b) to repay in whole or in part any LC Disbursement under Section 2.4(d) in the case of a Reimbursement Loan\*,

(b) for general corporate purposes, or

(d) capital expenditures related to the development or acquisition of new assets related to the System.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited [in the amount of \$\_\_\_\_\_] into Borrower's account at the Lender in accordance with the instructions set forth in the Agreement or to or on behalf of the Borrower in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

**[Insert wire instructions and amounts]]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
[Title]

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
[Title]

\*

Reimbursement Loans may only be Base Rate Loans, not Eurodoallar Loans.

Approved by the Lender:

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
[Authorized Officer]

**EXHIBIT D-1**

**FORM OF LETTER OF CREDIT REQUEST**

\_\_, 20\_\_

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: \_\_\_\_\_

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of November 29, 2019 (together with any amendments or supplements thereto, the “**Agreement**”), by and between Marin Clean Energy (with its successors and assigns, the “**Borrower**”) and JPMorgan Chase Bank, N.A. (with its successors and assigns, the “**Lender**”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.4 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the “*Proposed Letter of Credit*”):

1. The Business Day of the Proposed Letter of Credit is \_\_\_\_\_, 20\_\_ (the “**Issuance Date**”).
2. The principal amount of the Proposed Letter of Credit is \$\_\_\_\_\_, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Letter of Credit, the aggregate principal amount of all Loans and Letters of Credit outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date set forth in 1 above.
3. The tenor of the Proposed Letter of Credit shall be for [one][two][three] year[s].
4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:
  - (a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects on the date hereof, as if made on the date hereof;
  - (b) No Event of Default has occurred and is continuing;
  - (c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower’s ability to receive Revenues or its ability to perform its obligations under the Agreement or the other Related Documents.

5. The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application, a form of which is on file with the Borrower and the Lender.

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
Chief Operating Officer

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
[Title]

**Exhibit D-2**

**Short Form Letter of Credit Application**

**To be provided under separate cover by the Lender.**

**Exhibit D-3**  
**FORM OF COMMERCIAL & STANDBY LETTERS OF CREDIT BETWEEN MARIN CLEAN ENERGY AND**  
**JPMORGAN CHASE BANK, N.A.**  
(for Credits issued under a credit agreement)



To induce JPMorgan Chase Bank, N.A. and/or any of its domestic or foreign subsidiaries or affiliates (individually and collectively, **"Bank"**), to issue for the account of Applicant or for the account of the Account Party named in the Application, one or more standby or commercial letters of credit or other independent undertakings, from time to time at the request of the undersigned (individually and collectively, **"Applicant"**; jointly and severally, if more than one), Applicant agrees as to each letter of credit or undertaking (together with any replacements, extensions or modifications, a **"Credit"**, collectively, **"Credits"**) as follows:

All Credits issued pursuant to this Continuing Agreement (as amended, supplemented or otherwise modified, the **"Agreement"**) are issued under and pursuant to the terms and conditions of the Revolving Credit Agreement (as amended, extended, restated or otherwise modified from time to time, and including any successor agreement to which the Bank is a party (as a letter of credit issuing bank) which refinances or otherwise governs the Credits, the **"Credit Agreement"**) dated as of among Marin Clean Energy and JPMorgan Chase Bank, N.A. as Lender. Capitalized terms used herein and not otherwise defined have the meaning assigned to them in the Credit Agreement. If the Credit Agreement is terminated or expires, references in this Agreement to the Credit Agreement shall refer to the Credit Agreement in the form it was in immediately prior to such termination or expiration, unless otherwise agreed by Bank and Applicant. In the event of any inconsistency between the terms and conditions of the Credit Agreement and the terms and conditions of this Agreement, the terms and conditions of the Credit Agreement shall control, except that provisions relating to indemnification and limitation of Bank's liability as set forth in this Agreement shall also apply.

**1. Definitions:** The following terms shall have the meanings set forth below:

**"Application"** means an irrevocable request to issue a Credit, in a form acceptable to the Bank.

**"Costs"** means any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including reasonable and documented expert witness fees and legal fees, charges and disbursements of any counsel for any Indemnified Person.

**"Drawing Document"** means any document presented for purposes of drawing under a Credit.

**"Good Faith"** means honesty in fact in the conduct of the transaction concerned.

**"Instructions"** means each Application, any inquiries, communications and instructions (in any form, whether oral, telephonic, written, electronic mail or transmission or facsimile) regarding a Credit. Bank's records of the content of any Instruction shall be conclusive absent manifest error.

**"ISP"** means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

**"LOIs"** means steamship guarantees, releases or letters of indemnity in favor of a carrier issued by Bank upon Instruction of Applicant as set forth on Annex I.

**"Obligations"** means all obligations and liabilities of Applicant to Bank in respect of any and all Credits and LOIs issued hereunder (if any), whether matured or unmatured, absolute or contingent, now existing or hereafter incurred.



**“Property”** means all property of any kind whatsoever (now existing or hereafter acquired) referred to, or relating to, an applicable Credit including, without limitation, any and all right, title and interest of Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in any Credit or the Drawing Documents relating thereto).

**“Released Merchandise”** means, with respect to a Credit, all Property released (including pursuant to a forwarders cargo receipt or by any other means whatsoever) or consigned to Applicant or any Person designated by Applicant in connection with such Credit or related LOI.

**“Standard Letter of Credit Practice”** means, for Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the applicable Credit.

**“UCP”** means Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

**“UN Convention”** means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

**2. Limitation of Liability; Indemnification.** (a) Without limiting any provision of the Credit Agreement covering the limitation of liability of the issuing bank (including any exception set forth therein), Bank and each other Indemnitee shall not be responsible to Applicant for, and Bank’s rights and remedies against Applicant and Applicant’s obligation to reimburse Bank under the Credit Agreement shall not be impaired by: (i) honor of a presentation under any Credit which on its face substantially complies with the terms of such Credit; (ii) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (X) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (Y) under a new name of the beneficiary; (iii) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit; (iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under any Credit or of any Drawing Documents; (v) disregard of any non-documentary conditions stated in any Credit; (vi) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized to give such Instruction; (vii) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (viii) any delay in giving or failing to give any notice; (ix) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (x) any breach of contract between the beneficiary and Applicant or any of the parties to the underlying transaction; (xi) assertion or waiver of any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (xii) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; or (xiii) acting or failing to act as required or permitted under Standard Letter of Credit Practice (or in the case of other independent undertakings or guarantees, the UN Convention) applicable to where it has issued, confirmed, advised or negotiated such Credit, as the case may be.

(b) Without limiting any provision in the Credit Agreement covering the indemnification of the issuing bank by the Applicant (including any limitation or exception set forth therein) (**“Indemnity Provisions”**), such Indemnity Provisions shall apply to Bank and each related Indemnitee notwithstanding the occurrence of any of the events specified in clause (a) of this Section 2.

(c) If a Credit is to be governed by a law other than that of the State of New York, Bank shall not be liable for any Costs resulting from any act or omission by Bank in accordance with the UCP or the ISP, as applicable, and Applicant shall indemnify Bank for all such Costs.

**3. Foreign Currency.** Unless otherwise previously agreed by the Bank, if an amount drawn under any Credit is in non-United States dollar (**“foreign currency”**), Applicant shall reimburse Bank, on demand, the United States dollar equivalent of such drawn amount based on the Bank’s actual cost of settlement of its obligation. Applicant’s obligation to make payments in any currency (the **“Contract Currency”**) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment or otherwise, that is expressed in or converted into any currency other than the Contract Currency, except to the extent that such tender or recovery results in the actual receipt by Bank at

its designated office of the full amount of the Contract Currency specified to be payable hereunder. Applicant's obligation to make payments in the Contract Currency shall be enforceable as an alternative or additional cause of action to the extent that such actual receipt is less than the full amount of the Contract Currency specified to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder. Applicant shall indemnify Bank for any shortfall in such actual receipt.

**4. Representations and Warranties.** Applicant hereby represents and warrants on and as of the date hereof, and the date of each issuance, amendment, renewal and extension of a Credit, as applicable, that (i) this Agreement constitutes the legal, valid and binding obligation of Applicant enforceable against it in accordance with its terms; (ii) the representations and warranties set forth in the Credit Agreement are true and correct; and (iii) if applicable, no goods or vessels used to transport goods related to such Credit will be the subject of any Sanctions.

**5. Remedies.** If at any time there shall occur and be continuing any action for a temporary restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with any Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to Bank or which otherwise threatens to extend or increase Bank's contingent liability beyond the time, amount or other limit provided in such Credit or this Agreement then, Applicant shall, upon Bank's demand, deliver to Bank, as additional security for the Obligations, cash in an amount required by Bank.

**6. Assertion of Rights.** To the extent Bank honors a presentation for which Bank remains unpaid, Bank may assert rights of Applicant and Applicant shall cooperate with Bank in its assertion of Applicant's rights, if any, against the beneficiary, the beneficiary's rights against Applicant and any other rights that Bank may have by subordination, subrogation, reimbursement, indemnity or assignment.

#### **7. Notices, S.W.I.F.T., Electronic Transmissions.**

**(a) Notices.** Unless otherwise provided in the Credit Agreement, notices to Bank shall be sent to the address of Bank as set forth in the Credit and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to Applicant shall be sent to the address set forth in the Application unless advised otherwise in writing.

**(b) S.W.I.F.T.** Bank may transmit a Credit and any amendment thereto by S.W.I.F.T. message and thereby bind Applicant directly and as indemnitor to the S.W.I.F.T. rules.

**(c) Electronic Transmissions.** Bank is authorized to accept and process any Application and any amendments, transfers, assignments of proceeds, Instructions, consents, waivers and all documents relating to the Credit or the Application which are sent by electronic transmission using the system provided by Bank, including S.W.I.F.T., electronic mail, facsimile or other computer generated telecommunications ("**Electronic Transmission**") and such Electronic Transmission shall have the same legal effect as an original and shall be binding upon and enforceable against Applicant. Bank may, but shall not be obligated to, require authentication of such Electronic Transmission or receipt of original documents prior to acting on such Electronic Transmission. If it is a condition of the Credit that payment may be made upon receipt by Bank of an Electronic Transmission advising negotiation, Applicant hereby agrees to reimburse Bank on demand for the amount indicated in such Electronic Transmission advice, and further agrees to hold Bank harmless if the documents fail to arrive, or if, upon the arrival of the documents, Bank should determine that the documents do not comply with the terms and conditions of the Credit.

#### **8. COMMERCIAL CREDITS**

**(a) Pledge of Underlying Goods and Title Documents.** As security for the payment and performance of all obligations and liabilities of Applicant to Bank in respect of any and all commercial Credits and LOIs issued hereunder (if any) and under this Agreement, Applicant hereby grants to Bank a continuing lien and security interest in all of Applicant's right, title and interest in, to and under all the underlying goods relating to the commercial Credits and the title documents evidencing such goods and all products and proceeds of the foregoing (whether now existing or hereafter created or acquired) which have been or at any time shall be delivered to, received by or otherwise come into the possession or control of Bank, its correspondents or Applicant in connection with each Credit.

**(b) Acceptance of Drawing Documents; No Waiver.** Applicant's acceptance or retention of a Drawing Document presented under or in connection with any Credit (whether or not the document is genuine) or of any Released Merchandise shall ratify Bank's honor of the presentation and preclude Applicant from raising a defense, set-off or claim with respect to Bank's honor of such Credit. Bank shall not be required to seek any waiver of discrepancies from Applicant or to grant any waiver of discrepancies which Applicant approves or requests.

**(c) Possession of Drawing Documents.** If Bank shall agree to honor (accept) Drawing Documents under a Credit on a time draft or deferred payment basis, Applicant shall not take possession of the Drawing Documents or the underlying Property except for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with such Property in a manner preliminary to its sale or exchange. An Instruction to release any such Drawing Document or Property shall be deemed a representation by Applicant to Bank that Applicant seeks such release for one of said purposes. In each such case, Applicant shall apply the proceeds of Property to the Obligations relating to the applicable Credit.

**(d) Absence of Written Instructions.** In the absence of written instructions to the contrary, Applicant agrees that (i) if the Credit authorizes drawings and/or shipments in installments and any installment is not drawn and/or shipped within the period allowed for that installment but Applicant waives such discrepancy, Bank is authorized to honor any subsequent installments so long as documents for such installments are presented within the period allowed for such installments; and (ii) each negotiated Credit shall expire at the counters of the nominated person even if notice of the presentation or any documents contained in the presentation is not received by Bank until after the expiry date of the Credit or any installment thereof.

**(e) Release of Documents or Claiming of Goods from the Carrier.** In the event Bank, upon Applicant's request, agrees to deliver to Applicant, a customs broker or any other person designated by Applicant, any of the documents of title relating to the Credit, prior to having received payment in full of all the Obligations, Applicant agrees to obtain possession of any goods represented by such documents within twenty-one days after the date of delivery of such documents, and if Applicant fails to do so, Applicant agrees to return such documents or to have them returned to Bank prior to the expiration of the twenty-one day period. Applicant further agrees to execute and deliver to Bank receipts for such documents and the goods represented thereby identifying and describing such documents and goods. If Applicant claims from the carrier any goods identified in the shipping documents required under the Credit, (by virtue of a steamship release, air release, letter of indemnity or any other means), with or without the assistance of Bank, and such goods have been released to Applicant or a customs broker or agent acting on Applicant's behalf, Applicant hereby authorizes Bank to immediately, and without further inquiry and consideration, debit any account of Applicant in an amount equal to the fair market value of such goods, that have been released, together with any out-of-pocket charges or expenses owing to Bank.

## 9. STANDBY CREDITS

**(a) Installments.** If the Credit is issued subject to UCP 600, unless otherwise agreed, in the event that any installment of the Credit is not drawn within the period allowed for that installment, the Credit may continue to be available for any subsequent installments in the sole discretion of Bank, notwithstanding Article 32 of UCP 600.

**(b) Auto Extend Notice.** If the Credit provides for automatic extension without amendment, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give notice of nonextension if Applicant wishes the Credit not to be extended. Any decision to extend or not extend the Credit shall be in Bank's sole discretion and judgment. Applicant hereby acknowledges that in the event Bank notifies the beneficiary of the Credit that it has elected not to extend the Credit and the beneficiary draws on the Credit after receiving the notice of non-extension, Applicant acknowledges and agrees that Applicant shall have no claim or cause of action against Bank or defense against payment under the Agreement for Bank's discretionary decision to extend or not extend the Credit.

**(c) Pending Expiry Notice.** If a Credit's terms and conditions provide that Bank give beneficiary a notice of pending expiration, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give such notice of the pending expiration date. In the event Applicant fails to so notify Bank and the Credit is extended, Applicant's Obligations under this Agreement shall continue in effect and be binding on Applicant with regard to the Credit as so extended.

**10. Waiver of Defense; Joint and Several Liability.** Applicant waives any defense whatsoever which might constitute a defense available to, or discharge of, a surety or a guarantor. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and Property of such Persons shall apply to any liabilities, obligations and Property of any and all of them.

**11. Termination.** This Agreement is a continuing agreement and may not be terminated by Applicant except upon (i) thirty (30) days' prior written notice of such termination by Applicant to Bank at the address of Bank set forth on the most recent Credit issued hereunder, (ii) payment of all Obligations and (iii) the expiration or cancellation of all Credits issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of a sovereign or commercial entity, which is to issue a guarantee or undertaking on Applicant's

behalf in connection therewith, or is issued as support for such a guarantee, Applicant shall remain liable with respect to such Credit until Bank is fully released in writing by such entity.

**12. Amendment; Waiver.** Bank shall not be deemed to have amended or modified any term hereof, or waived any of its rights unless Bank consents in writing to such amendment, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to such waiver, nor as to any continuance of a breach after such waiver. Bank's consent to any amendment, modification or waiver does not mean that Bank shall consent or has consented to any other or subsequent Instruction to amend, modify, or waive a term of this Agreement or any Credit.

**13. Commencement of Action.** Any action or proceeding in respect of any matter arising under or in connection with Credits, the Applications or this Agreement must be brought by Applicant against Bank within the time period specified in Section 5-115 of the Uniform Commercial Code.

**14. Jurisdiction; Waiver of Jury Trial; Governing Law.** Applicant agrees to be bound by the provisions in the Credit Agreement relating to jurisdiction, venue, and waiver of jury trial and that such provisions shall also apply to this Agreement. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

**15. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of Bank and Applicant and their respective successors and assigns permitted hereby, except that Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer any right or benefit upon any Person (other than the parties hereto, the Indemnified Persons and their respective successors and permitted assigns).

**16. Counterparts; Integration; Electronic Execution.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the Credit Agreement constitute the entire contract and final agreement among the parties relating to the subject matter and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf, or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

**17. Survival.** The provisions of Sections 2, 8(a), 11, 14 and 17 shall survive and remain in full force and effect regardless of the consummation of any transactions contemplated hereby, the reimbursement or repayment of any drawings or Obligations, the expiration or termination of the Credits or LOIs or the termination of this Agreement or any provision hereof.

**IN WITNESS WHEREOF**, the Applicant hereto has caused this Agreement to be duly executed and delivered by its respective authorized officer as of the day and year written below.

APPLICANT/OBLIGOR  
**MARIN CLEAN ENERGY**

By:

Name:  
Title:  
Date:

**ANNEX I TO CONTINUING AGREEMENT**

If Bank issues an LOI or endorses a bill of lading at the instruction of Applicant or otherwise pursuant hereto, Applicant agrees as follows:

Except as otherwise set forth in this Annex I or expressly set forth elsewhere in this Agreement, an LOI shall be deemed issued by Bank subject to the same terms and conditions set forth herein for Credits, including, without limitation, payment obligations, indemnification provisions and limitations of liability benefiting Bank and other Indemnified Persons. Applicant shall be liable for payments made under any LOI on demand and otherwise in accordance with its absolute obligation to reimburse the Bank set forth in the Credit Agreement. Bank shall have the right in its sole discretion and without notice to or approval of Applicant, to pay, settle or adjust any claim or demand made against or upon Bank in connection therewith without inquiry or determination, on Bank's part, of the circumstances, merits or validity of any claim or demand. Applicant shall take whatever steps are necessary to obtain the shipping documents concerning the Released Merchandise. Upon Applicant's receipt of such shipping documents, Applicant shall deliver them to the carrier, duly endorsed by all parties whose endorsement is required by the carrier, and obtain from the carrier and deliver to Bank, the LOI and a release of Bank's liability to the carrier. Bank may make payments against any drawing under the Credit related to an LOI, whether or not the drawing shall comply with the terms and conditions of such Credit, without any liability whatsoever to Bank. Applicant expressly acknowledges that Applicant may be required to reimburse Bank for payments made by Bank under both the LOI and such Credit with respect to the same Released Merchandise. Applicant shall account by delivering to Bank, immediately upon the receipt thereof by Applicant, the proceeds of the sale of the Released Merchandise or the documents related thereto in whatever form received (with Applicant's endorsement where necessary) to be applied by Bank to the payment of any drawing under the Credit. If any proceeds shall be notes, accounts, acceptances, or in any form other than cash, they shall not be applied by Bank until paid in cash. Bank shall have the option at any time to sell or discount these items and so apply the net proceeds, conditionally upon final payment of these items. Applicant shall pay all charges in connection with the Released Merchandise and shall at all times hold it separate and apart from the Property of Applicant and shall definitively show such separation in all its records and entries. Applicant shall at all times keep the Released Merchandise fully insured at Applicant's expense in favor of, and to the satisfaction of, Bank against loss by fire, theft, and any other risk to which it may be subject. Applicant shall deposit the insurance policies with Bank upon its demand. If for any reason any of such policies fail to provide for payment of the loss thereunder to Bank as its interest may appear, Applicant hereby (1) assigns and makes the loss payable under any of such policies payable to Bank as its interest may appear, (2) assigns to Bank all of the avails and proceeds of any and all of such policies, and (3) agrees to accept such avails and proceeds in trust for Bank and to forthwith deliver the same to Bank in the exact form received (with the endorsement of Applicant where necessary). Bank shall have no responsibility for the existence, quantity, quality, condition, value or delivery of any Released Merchandise or the correctness, validity or genuineness of the documents purporting to represent Released Merchandise.

**EXECUTION COPY****FEE AGREEMENT**

This FEE AGREEMENT dated November 29, 2019 (as amended, modified or restated from time to time, this "*Fee Agreement*"), is by and between the MARIN CLEAN ENERGY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, "*Borrower*"), and JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, the "*Lender*").

Reference is made to the Revolving Credit Agreement, dated as of November 29, 2019 (as amended, modified, extended or restated from time to time, the "*Agreement*"), entered into between the Borrower and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

**ARTICLE I FEES.**

*Section 1.1 Undrawn Fees.* The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the "*Commitment End Date*"), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the Commitment End Date, and on the Commitment End Date (each, a "*Payment Date*"), a non-refundable undrawn fee (the "*Undrawn Fee*") in an amount equal for each day during such calculation period to the product of (x) forty-four and a half basis points (0.445%) per annum (the "*Undrawn Fee Rate*"), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The term "*Unutilized Commitment*" as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The Undrawn Fee shall be calculated from and including one Payment Date (or, in the case of the first Undrawn Fee payment, the Closing Date) to but excluding the next Payment Date (each, a "*Payment Period*"), and the Lender shall provide the Borrower with an invoice for each Undrawn Fee; provided, however, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such Undrawn Fee.

*Section 1.2 Letter of Credit Fees.* The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the "*LC Termination Date*"),

**EXECUTION COPY**

and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) seventy-five basis points (0.75%) per annum for a Letter of Credit with a term no greater than one year, eighty-five basis points (0.85%) per annum for a Letter of Credit with a term greater than one year but less than two years, and ninety-five basis points (0.95%) per annum for a Letter of Credit with a term greater than two years but less than three years (such applicable rate, the “*LC Facility Fee Rate*”), (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued (unless such date of issuance is a LC Payment Date)) to but excluding the next LC Payment Date (each, a “*LC Payment Period*”), and the Lender shall provide the Borrower with an invoice for each LC Facility Fee; provided, however, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such LC Facility Fee.

*Section 1.3 Issuance or Drawing Fees.* The Borrower agrees to pay to the Lender a non-refundable fee of \$500 for each issuance or drawing under a Letter of Credit, which fee shall be earned on the issuance or drawing date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

*Section 1.4 Amendment Waiver or Consent Fees.* The Borrower agrees to pay to the Lender on the date on which the Borrower requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$3,000, plus, in each case, the reasonable fees and expenses of legal counsel to the Lender; provided, however, that in the case of a simple extension with no modifications to any Basic Document, there shall be no fee of the Lender required hereunder, though reasonable fees and expenses of legal counsel to the Lender shall still be applicable.

*Section 1.5 Termination Fee; Reduction Fee.*

(a) The Borrower hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the Borrower prior to the date that is half-way between the Closing Date and the Maturity Date (such date, the “*Mid-Point Date*”), in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Maturity Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination; provided, however, that no Termination Fee shall be payable if the Commitment is terminated prior to Mid-Point Date as a result of (i) the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of

**EXECUTION COPY**

the Agreement as a result of a Change in Law, unless the Borrower replaces the Commitment with a lender agreement provided by a bank (a “*Lender Agreement*”) or other financial institution that is also subject to the effects of such Change in Law, in which case the Termination Fee shall be payable, or (ii) a good faith determination by the Borrower that the Commitment is no longer needed and all outstanding Loans and LC Disbursements are paid in full on or prior to the termination date from a source of funds that does not, directly or indirectly, involve a Lender Agreement. No termination in full of the Commitment shall become effective unless and until all amounts payable by the Borrower to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) The Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the Mid-Point Date, without the payment by the Borrower to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to the Maturity Date, and the denominator of which is 360; provided, however, that no Reduction Fee shall be payable if the Commitment is permanently reduced prior to Mid-Point Date as a result of (i) the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of the Agreement as a result of a Change in Law, unless the Borrower replaces the permanently reduced Commitment with a Lender Agreement provided by a bank or other financial institution that is also subject to the effects of such Change in Law, in which case the Reduction Fee shall be payable, or (ii) a good faith determination by the Borrower that the amount of the Commitment being permanently reduced is no longer needed and, if such permanent reduction requires the prepayment or repayment of Loans or LC Disbursements, that such outstanding Loans and LC Disbursements are paid in full on or prior to the reduction date from a source of funds that does not, directly or indirectly, involve a Lender Agreement. Under no circumstances shall the Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the Borrower reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

*Section 1.6 Applicable Margin.* As used in the Agreement and this Fee Agreement, the “Applicable Margin” means one hundred fifty basis points (150%).

*Section 1.7 Default Rate.* For purposes of this Fee Agreement and the Agreement, “Default Rate” means, with respect to any Loans (but not Letters of Credit), the then applicable Adjusted LIBO Rate or Base Rate plus the Applicable Margin plus three percent (3%), and with respect to any Letter of Credit that has not triggered a Reimbursement Loan, the then applicable LC Facility Fee Rate plus three percent (3%).



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**ARTICLE II MISCELLANEOUS.**

*Section 2.1 Legal Fees.* The Borrower shall pay the reasonable legal fees and expenses of the Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount not to exceed \$35,000 plus disbursements.

*Section 2.2 Amendments.* No amendment to this Fee Agreement will become effective without the prior consent of the Borrower and the Lender, which consent must be in writing and signed by the Lender and an Authorized Representative of the Borrower.

*Section 2.3 Governing Law.* This Fee Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without giving effect to conflicts of laws provisions (other than New York general obligations laws 5-1401 and 5-1402); *provided*, that the obligations of the Borrower hereunder shall be governed by the laws of the State of California without regard to choice of law rules.

*Section 2.4 Counterparts.* This Fee Agreement may be executed in two or more counterparts, each of which will constitute an original but both or all of which, when taken together, will constitute but one instrument. This Fee Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

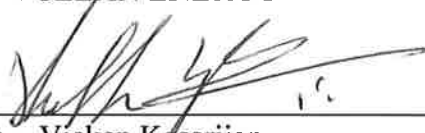
*Section 2.5 Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGES TO FOLLOW]

**EXECUTION COPY**

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

MARIN CLEAN ENERGY

By:   
Name: Vicken Kasarjian  
Title: Chief Operating Officer

By:   
Name: Kathrin Sears,  
Title: Chair MCE Board

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
Name: Allyson Goetschius  
Title: Executive Director

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

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By: \_\_\_\_\_  
Name: Vicken Kasarjian  
Title: Chief Operating Officer

By: \_\_\_\_\_  
Name: Kathrin Sears  
Title: Chair MCE Board

JPMORGAN CHASE BANK, N.A.

By Allyson Goetschius  
Name: Allyson Goetschius  
Title: Executive Director

*Signature Page to MCE Fee Agreement*



November 17, 2022

TO: MCE Board of Directors

FROM: Garth Salisbury, Chief Financial Officer & Treasurer  
Justin Kudo, Senior Strategic Analysis and Rates Manager  
John Dalessi, CEO, Pacific Energy Advisors

RE: Proposed MCE Rate Adjustment Effective January 1<sup>st</sup>, 2023  
(Agenda Item #07)

Dear Board Members:

### **Executive Summary**

The MCE Implementation Plan and Statement of Intent ("Implementation Plan") describes the policies and procedures for setting and modifying electric rates for MCE. MCE rates are typically reviewed on an annual basis as part of MCE's budget-setting process, and after PG&E has made its primary annual rate update to determine whether rate changes are warranted in consideration of MCE's cost of service, revenue sufficiency in the fiscal year's proposed budget, rate competitiveness, rate stability, customer understanding, efficiency and equity among customers.

In December 2021, MCE's Board of Directors approved a \$0.02/kWh increase to system average rates. This rate change was designed to cover the increased costs of energy procurement in 2021 and 2022. The change also provided a significant savings to customers by setting rates for a total bill cost below PG&E's total cost; customers are estimated to be saving approximately \$90 million in calendar year ("CY") 2022.

Further increases in statewide energy prices have caused a reduction in MCE's budgeted annual net revenue of \$108.6 million. These increased costs are being absorbed by MCE's budgeted addition to its Net Position of \$98.2 million. As a result, staff now forecasts that MCE will instead subtract \$10.4 million from its Net Position this fiscal year.

One positive aspect of increased statewide energy costs is how they impact the Power Charge Indifference Adjustment (PCIA) rate PG&E charges to MCE customers. The PCIA is calculated based on the difference between the value of PG&E's energy portfolio and the CPUC Market Price Benchmark (MPB). PG&E's forecast based on the updated MPB

suggests the PCIA should be reduced by \$0.02-0.03/kWh<sup>1</sup> in 2023, and is likely to be negative (i.e., a credit per kWh). This would offset most of the increase to MCE rates proposed herein and, if the Board adopts the rate increase recommendation, enable MCE to remain less expensive than PG&E service.

PG&E's 2023 rate forecast suggests that the reductions to the PCIA would reduce the average MCE household bill by about \$10 to \$15 per month. This is subject to PG&E's final rate proposal and approval (which will be available in late December) falling within the forecast range and made effective January 1, 2023.

The following staff report describes the current and on-going energy market dynamics and cost pressures and the consequent impact on MCE's near and long-term financial stability as rationale for considering a rate increase ranging from of \$0.03/kWh to \$0.05/kWh.

Based on this information, on November 4, 2022, the MCE Executive Committee recommended that your Board consider an increase to MCE system average rates of \$0.04/kWh, effective January 1, 2023, to strike an appropriate balance between core MCE ratesetting principles of revenue sufficiency and cost competitiveness. This proposal would increase the forecast fiscal year ("FY") 22/23 addition to Net Position by \$51 million, enabling MCE to both achieve some of its reserve target goals and, if necessary, to manage further increases to energy costs this fiscal year.

## **MCE Ratesetting Cycle, Objectives and Process**

**Ratesetting Cycle:** MCE typically adjusts its rates on an annual basis, following a process of discussion, review, and public notification. Ratesetting is usually coordinated with the annual budgeting cycle (April 1 – March 31 of the ensuing year) due to the inherent linkages between the MCE budget and MCE rates. Rates may also be adjusted off cycle, when necessary, to ensure recovery of all MCE costs. Your Board last adjusted rates in a two-step process in January and March of this year to address increased costs and to ensure recovery of those costs.

The initial release of MCE's proposed rates initiates a thirty-day public review and comment period. If rate increases are being proposed, the affected MCE customers are provided with notice of proposed rate increases. Following completion of the thirty-day public review and comment period, final rates are adopted by the Board. Final rates may differ from the initially proposed rates to account for changes in MCE's budget, consideration of public comments received during the aforementioned review period, changes in PG&E rate forecasts, and/or other factors that may be considered by your Board.

Implementation of PG&E's 2023 Annual Electric True-Up is expected to occur on January 1, 2023. Current forecasts are based on PG&E's October Energy Resource Recovery

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<sup>1</sup> An updated forecast is expected in PG&E's Annual Electric True-Up Forecast on November 15<sup>th</sup>.

Account (ERRA) Update<sup>2</sup>, and the published CPUC Market Price Benchmarks<sup>3</sup>. Final rates typically do not become public until the final week of December.

**Ratesetting Objectives:** MCE has established various objectives that are considered in designing MCE rates. These ratesetting objectives are as follows:

Revenue sufficiency: rates must recover all expenses, debt service and other expenditure requirements, and build prudent reserves; i.e., the “revenue requirement”.

Rate competitiveness: rates must allow MCE to successfully compete in the marketplace to retain and attract customers.

Rate stability: rate changes should be minimized to reduce customer bill impacts.

Customer understanding: rates should be simple, transparent and easily understood by customers.

Equity among customers: rate differences among customers should be justified by differences in usage characteristics and/or cost of service.

Efficiency: rates should encourage conservation and efficient use of electricity (e.g., off-peak vehicle charging or time-of-use load shifting).

To the extent that the objectives may be in tension with one another, the rate proposal attempts to strike an appropriate balance. For example, a cost-of-service analysis might suggest that a particular rate should be increased, but the increase might be limited in the interest of rate stability and/or rate competitiveness. In accordance with the Implementation Plan, the policy of revenue sufficiency may not be violated; however, the Board may use discretion in how the other ratesetting objectives are reflected in MCE rates.

**Ratesetting Process:** The ratesetting process is based on a forecast of MCE electric revenue for the coming fiscal year, determined by examining the forecast load for each rate class. The forecast includes current customers, as well as any communities expected to begin MCE service, organized by forecast monthly billing quantities expected under each rate class. Depending upon the rate class in question, billing quantities can include monthly energy usage (kWh), hourly or aggregated load profiles, peak coincident demand, and peak capacity (kW) demand during specified time-of-use periods. The forecasted billing quantities are multiplied by applicable rates to derive a forecast of revenues at current MCE rates.

The projected revenue at current rates is compared to fiscal year budget items that must

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<sup>2</sup> PG&E 2023 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation Update.

<sup>3</sup> Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/calculation-of-the-market-price-benchmarks-20220930.pdf>.

be funded through such rates (the “revenue requirement”) to determine whether rate adjustments are warranted for purposes of addressing any projected surplus or deficit.

Rates are designed for the various schedules associated with each customer class in order to recover the revenue requirement allocated to that class. Rates are also evaluated for other key ratesetting considerations, such as cost competitiveness, equity among customers, peak-to-off-peak ratios, and so forth. There are currently 86 rate schedules and over 450 rate components which are adjusted during a rate change cycle.

## **Variations in Outcomes Inherent in Revenue and Cost Projections**

Financial projections are subject to certain variations inherent in MCE’s operations related to the cost of providing electricity to consumers and cash receipts from billing operations. Key variables that can drive MCE’s costs above expected levels include unanticipated increases in prices in the CAISO market, the impact of extreme heat events such as those experienced in August 2020 and September 2022, worsening congestion costs at MCE’s renewable generation projects and other supply delivery points, and delays in commercial operation of new renewable projects that are expected to achieve operations in the upcoming fiscal year. Revenues can vary from projections due to changes in customer usage levels and consumption patterns driven by weather, expansion of customer-sited solar, business cycles or general economic conditions. Continuing variations from the projections and assumptions utilized for financial and budgetary planning could result in outcomes significantly divergent from those depicted here.

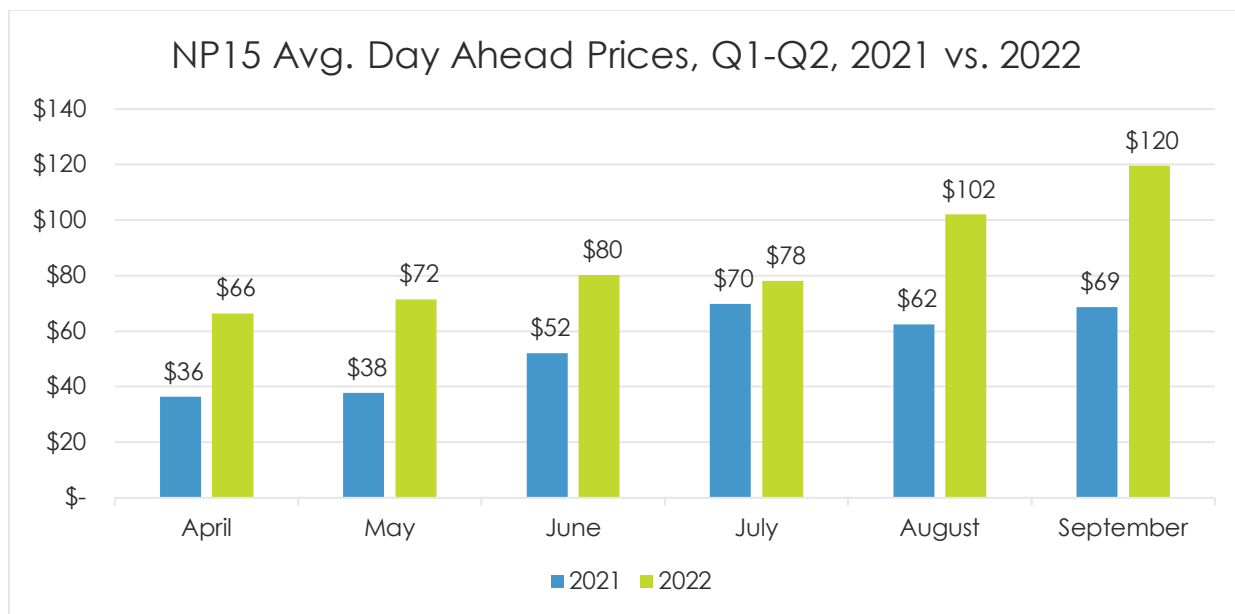
## **Increasing Cost of Energy**

During last year’s Ratesetting presentation, staff described significant increases in statewide energy costs during 2021, which necessitated MCE raising rates in the final quarter of the fiscal year. These elevated prices have not only persisted in 2022, but have risen significantly higher and well-above industry forecasts.

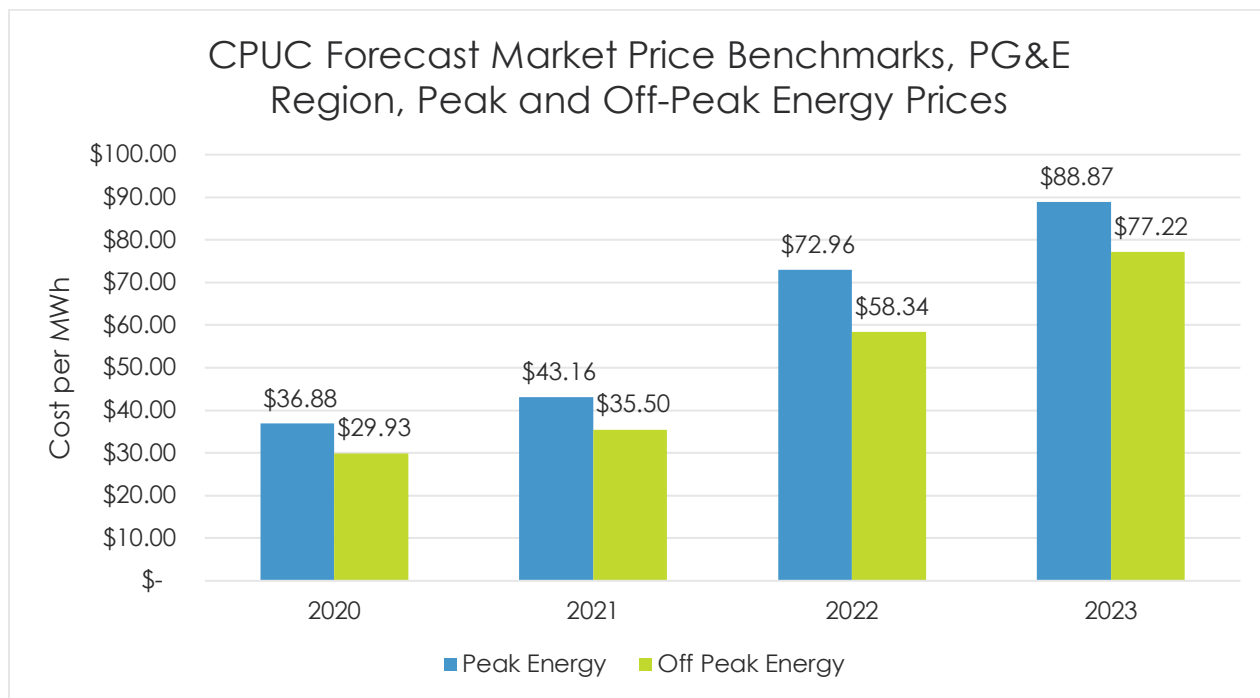
The two major categories of MCE’s power supply expenses are energy and resource adequacy (“RA”). The costs for both categories have increased. Energy, typically measured in megawatt hours, is the electricity that is used by consumers and produced by electric generators. RA capacity, typically measured in megawatts, is the maximum amount of energy that can be produced at any instant. MCE sells energy to its customers and must buy RA capacity to meet its peak monthly loads plus a reserve margin to help ensure reliability of serving the load.

## **Wholesale Energy Costs**

Wholesale energy prices in California continued the steep upward trend reported during last year’s Ratesetting discussions. Staff noted then that Day Ahead Market (DAM) prices for energy had risen by 60% in 2021. Those prices rose by another 60% during the first two quarters of FY22/23.



These price increases are also reflected in the Market Price Benchmarks utilized by the CPUC, which forecast the average prices of peak and off-peak energy in the coming year. The MPB's serve as a strong, publicly accessible indicator of where energy markets are expected to trend in the coming year. Most importantly, these numbers are used as the basis for the calculation of the PCIA.



These prices have been driven by a multitude of factors, including:

- Drought conditions limiting hydroelectric energy production
- Natural disasters limiting import capabilities from the Pacific Northwest
- Natural gas prices which have tripled since 2020, due to national and global strains



on the gas market

- Inflation and interest rate increases driving increased costs of business and financing
- Labor and equipment shortages
- COVID-19 disruptions
- Extended development timelines for construction of new resources

Consistent with its energy risk management policy and industry best practices, MCE buys most of its energy requirements many months in advance of actual delivery to help manage its exposure to volatile short term spot prices. However, these increases to wholesale costs still impact MCE's energy supply costs in myriad ways, such as:

- Impacting the cost of incremental energy purchased from the market, particularly system peak energy such as in the evening during heat waves
- The cost of replacement contracts for delayed or non-performing resources
- Increased costs of shaping electricity within MCE's portfolio

### Resource Adequacy Costs:

RA capacity costs have been trending higher every year as the supply/demand balance for generating capacity has moved from surplus to shortage. Natural gas-powered generation retirements and the planned shutdown of the state's last nuclear power plant reduced available RA capacity, and new capacity has not kept pace.

Regulatory changes have also reduced the value of RA from solar, wind, and certain types of other storage resources. At the same time, regulatory entities have expanded RA requirements, creating a significant increase in demand during a time of short supply. In fact, PG&E has filed requests to have CPUC penalties for failure to meet RA obligations waived a dozen times in the last two years.

### MCE Resource Adequacy Costs per MWh, 2019-2024

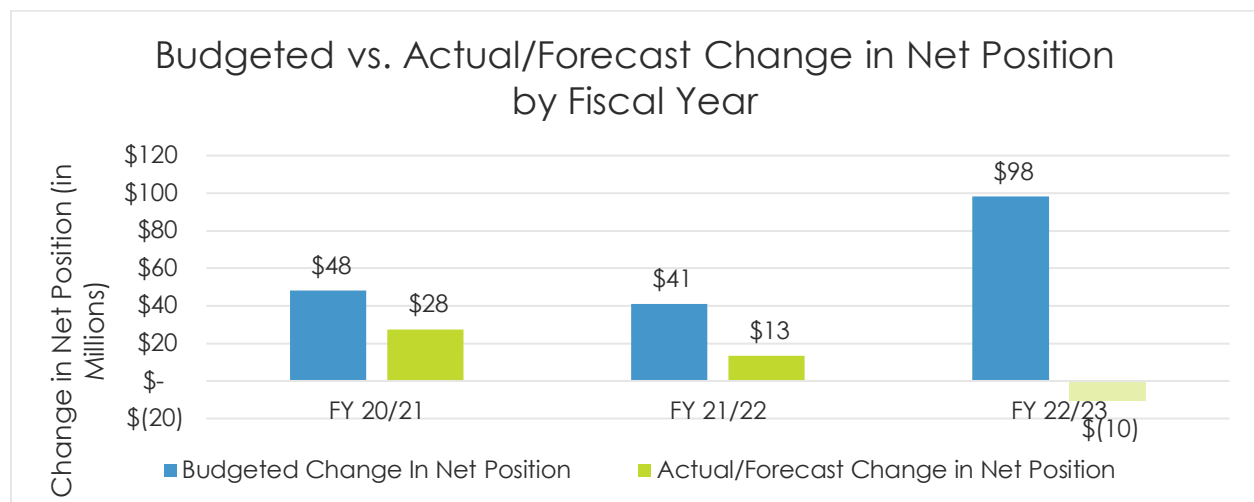


As a result, MCE's RA costs have risen from about \$5.44 per MWh (i.e., \$2.50/month per household, on average) in 2019 to \$18.15 per MWh (\$8.35/month per household) forecast for 2023. Prices are not expected to moderate until new generation and storage capacity comes online over the next several years.

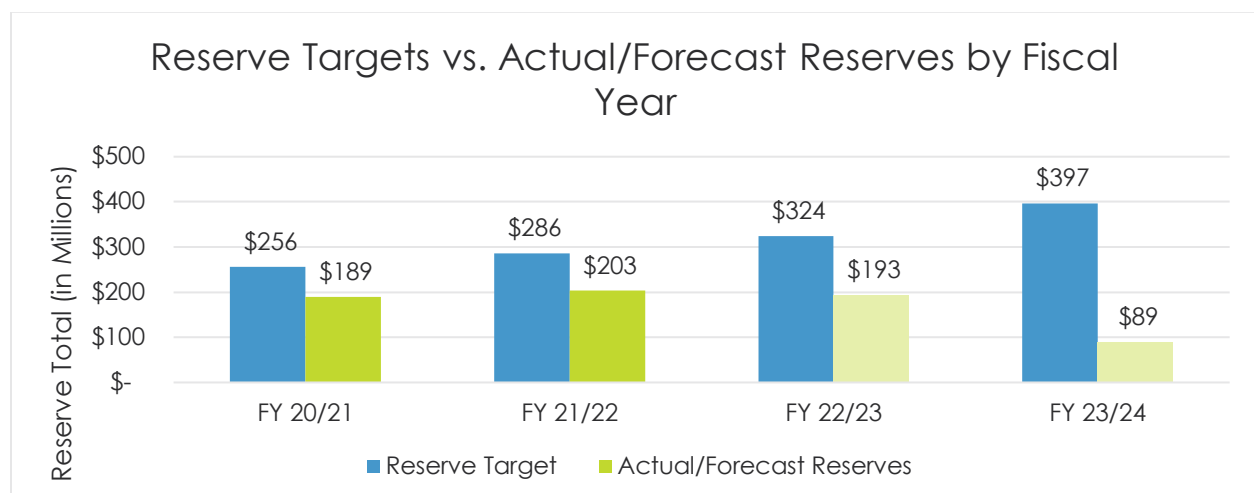
## Impacts on MCE's Net Position and Reserve Targets

Rising energy costs have two key impacts on MCE's Net Position and Reserve Targets. MCE's stated reserve target is 60% of projected annual operating expenses plus the cost of energy. Therefore, the impact of rising energy costs is twofold:

- Actual energy costs exceed budgeted costs and will absorb planned contributions to reserves.
  - MCE budgets planned to add \$187 million to reserves between FY 20/21 and FY 22/23; prior to this fiscal year, MCE only added \$41 million and expects to see a reduction of over \$10 million this year.
- Higher energy costs increase the reserve target for the next fiscal year.
  - MCE's reserve target was \$256 million in FY 20/21, but has risen by \$30-\$40 million annually, and is expected to be \$397 million in next year's budget.



Netted out, MCE's reserve target is rising faster than additions to those reserves. Moreover, without an adjustment to rates, continuing price trends into FY 2023/24 forecasts a significant decrease to MCE's net position.



## Description of Rate Components

A breakdown of the major electric rate components paid by both MCE and PG&E customers:

	MCE Customers	PG&E Bundled Customers
Generation	At MCE Rates	At PG&E Rates
Non-Gen (T&D)	PG&E Rates (same)	PG&E Rates (same)
PCIA & FF	Based on community MCE start date	Based on current year

**Generation** – the cost to provide electricity, inclusive of RA. MCE’s generation rates only apply to MCE customers. These are the only rates set by MCE. PG&E’s generation rates are competitively relevant, as a customer can opt-out to receive PG&E rates instead.

**Non-Gen (T&D)** – PG&E non-generation rates (often referred to as T&D, for Transmission and Distribution, but inclusive of other charges such as Public Purpose Programs, Nuclear Decommissioning, the Wildfire Fund Charge, Conservation Incentive Adjustments, and other nominal fees) which apply equally to both MCE and non-MCE customers.

**PG&E PCIA** – PG&E’s Power Charge Indifference Adjustment rate is a customer charge based on how much PG&E’s portfolio costs exceed its value (as determined by the MPB), during the year when the customer started CCA service. Historically this has only been applied to CCA customers, as PG&E has argued it was inherent in PG&E’s generation rate. PG&E has now been directed to show the PCIA distinct from its base generation rate. The PCIA varies depending on “vintage”, generally determined by when a community exited PG&E service for CCA service. Customers who remain on PG&E bundled (non-CCA) service may have a different vintage and therefore a different PCIA rate. The Franchise Fee (FF) is a de minimis charge paid by CCA customers; for simplicity’s sake, this has been included in the PCIA.

## Forecast Changes to 2023 PG&E Rates

Overall, PG&E rates for PG&E bundled customers in 2023 are expected to remain relatively flat, while rates for MCE customers would decrease significantly due to PCIA reductions.

### Forecast Changes to Default Residential Rates

	PG&E Bundled Customers	MCE Customers
Generation	+\$0.018/kWh	Not set by PG&E
Non-Gen (T&D)	+\$0.01/kWh	+\$0.01/kWh
PCIA	-\$0.017/kWh	-\$0.027/kWh
Total	+\$0.002/kWh	-\$0.026/kWh

**PG&E Bundled Customers:** PG&E’s October forecast of its 2023 rates indicates that PG&E would have an increase to its generation rates offset by a decrease to its PCIA

rates. Non-Generation rates are expected to go up by about \$0.001/kWh. Overall, rates would increase by about \$0.002/kWh.

**MCE Customers:** PG&E's October forecast suggests that PCIA rates for MCE customers would be reduced significantly for MCE's vintages, by about \$0.02 - \$0.03/kWh<sup>4</sup>. Customers would also pay the increase to Non-Generation rates of about \$0.001/kWh. Overall, rates would decrease by about \$0.02 - \$0.03/kWh. This PCIA reduction would decrease the typical household bill by about \$11/mo.

**PCIA:** Significant increases in the Market Price Benchmark have largely eliminated the obligation of CCA customers to pay a PCIA rate in 2023. Additionally, a true-up of the PCIA paid in 2022 is expected to show significant overpayments which must be refunded to customers through a lower rate next year. The resulting total forecast rate is negative, imparting a credit per kWh on customer sales.

One notable exception is that the 2022-2023 PCIA vintages are markedly higher than other PCIA vintages by about \$0.015/kWh (i.e., \$7/month on the average household bill). These rates are not generally applicable to MCE customers, and as such are not included in the summaries herein. These PCIA rates should only apply to customers who previously opted-out that are returning to MCE post-July 2022<sup>5</sup>.

## Rate Comparisons

The cost of MCE service today (MCE generation rate plus PCIA) is about \$0.015 - \$0.03/kWh below PG&E depending on rate schedule, PCIA vintage, and customer load profile. The average MCE household saves about \$11 per month on their electricity bill. A sample of the most common rate schedules is below, based on data regularly published on PG&E's website with MCE's review.

Current Sample Rate Comparisons by Class<sup>6</sup>

Customer Class	Rate	PG&E Gen + PCIA	MCE Gen + PCIA	Delta
Basic Residential	E1	\$0.152/kWh	\$0.128/kWh	\$(0.024)/kWh
Small Commercial	B1	\$0.145/kWh	\$0.124/kWh	\$(0.021)/kWh
Medium C&I	B10S	\$0.153/kWh	\$0.129/kWh	\$(0.024)/kWh
Medium/Large C&I	B19SV	\$0.141/kWh	\$0.123/kWh	\$(0.018)/kWh
Agriculture	AGA1	\$0.131/kWh	\$0.117/kWh	\$(0.015)/kWh

Based on the above rates, staff estimates that MCE is delivering about \$10 million in savings to customers every month, and will save customers about \$90 million in CY 2022.

Forecast PG&E rates would result in these MCE rates being about \$0.04 - \$0.05/kWh below PG&E depending on rate schedule, PCIA vintage, and customer load profile. The average MCE household is forecast to save, absent an MCE rate change, about \$23 per

<sup>4</sup> A range is provided due to the wide spectrum of PCIA vintages among MCE communities, as well as rate schedules.

<sup>5</sup> This does not include newly created accounts which never opted-out of service, such as new construction or move-ins.

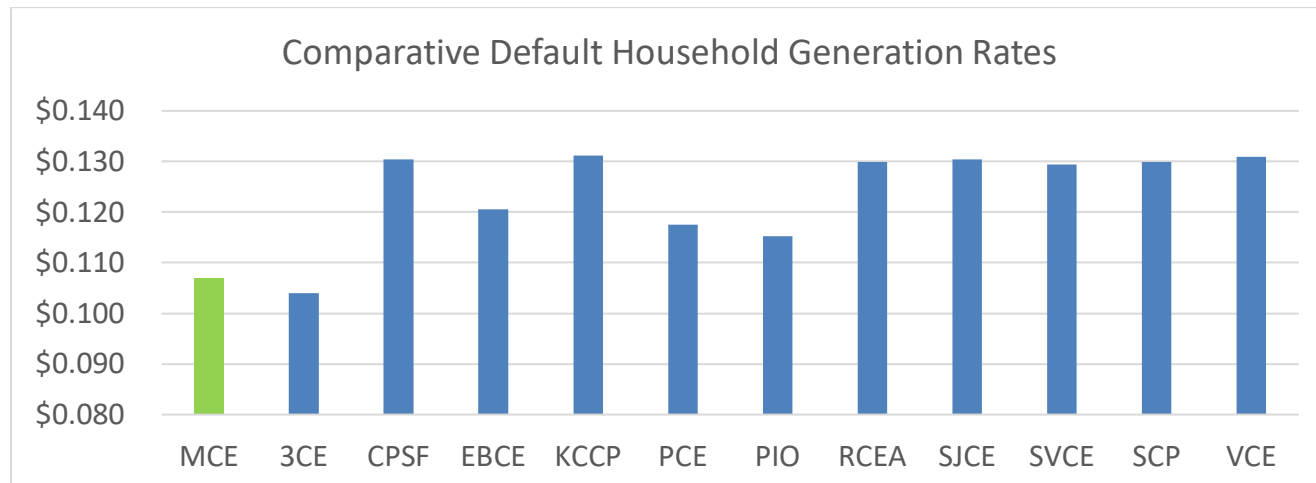
<sup>6</sup> Based on MCE-PG&E Joint Rate Comparison, updated June 1 2022.

month on their electricity bills. The below tables have been updated based on rates as forecast by PG&E. Notably, staff has replaced the “average” PCIA described by PG&E with the 2016 vintage rate, which is generally more representative of PCIA rates paid by MCE customers.

Updated with ERRA Forecast<sup>7</sup>, Without MCE Rate Change

Customer Class	Rate	PG&E Gen + PCIA	MCE Gen + PCIA	Savings
Basic Residential	E1	\$0.152/kWh	\$0.103/kWh	\$(0.049)/kWh
Small Commercial	B1	\$0.146/kWh	\$0.100/kWh	\$(0.046)/kWh
Medium C&I	B10S	\$0.153/kWh	\$0.103/kWh	\$(0.050)/kWh
Medium/Large C&I	B19SV	\$0.145/kWh	\$0.099/kWh	\$(0.046)/kWh
Agriculture	AGA1	\$0.139/kWh	\$0.094/kWh	\$(0.045)/kWh

During the October 2022 Board meeting, your Board requested an evaluation of how MCE current rates compare with other CCAs in PG&E’s service territory. MCE has the second-lowest rates of these CCAs. The comparison below shows the average default residential rate currently charged by each CCA.



## MCE Rate Proposal

To account for the significant increases in power supply costs and the other issues described above, staff proposes that your Board consider an increase to MCE system average rates of \$0.04/kWh, effective January 1<sup>st</sup>, 2023. Staff estimates that, inclusive of PG&E increases to T&D and decreases to PCIA, the typical MCE household bill would increase by about \$7.22 per month, but **would provide a savings of about \$4.68 per month compared with the PG&E cost.**

<sup>7</sup> Based on Attachment A of PG&E’s 2023 ERRA forecast, updated October 17 2022. PCIA rates are based on Table F. Includes an assumed Franchise Fee of \$0.001/kWh.

### Average Monthly Residential Electric Charges

	Current MCE Customer Charges	Forecast 2023 MCE Customer Charges (+\$0.04/kWh)	Forecast 2023 PG&E Customer Charges
Generation	\$47.70	\$66.10	\$63.76
Non-Gen (T&D)	\$90.89	\$91.35	\$91.35
PCIA	\$9.57	\$(2.07)	\$4.95
Total	\$148.15	\$155.37	\$160.06

### Alternative Scenarios

Staff has also considered the impacts of a smaller or larger rate increase, based on increments of \$0.01/kWh:

	\$0.03/kWh Increase	\$0.04/kWh Increase	\$0.05/kWh Increase
Generation	\$61.50	\$66.10	\$70.70
Non-Gen (T&D)	\$91.35	\$91.35	\$91.35
PCIA	\$(2.07)	\$(2.07)	\$(2.07)
Total	\$150.77	\$155.37	\$159.97

**\$0.03/kWh Increase** – staff believes this provides the minimum rate level to secure revenue sufficiency for the current fiscal year. The PCIA drop would offset the rate increase almost entirely.

**\$0.04/kWh Increase** – the staff recommendation, striking a balance between providing customers a savings and working towards revenue targets.

**\$0.05/kWh Increase** – the maximum possible increase while generally keeping costs under PG&E. However, certain rates and customer scenarios may be a little higher than PG&E, and this approach leaves little margin compared to PG&E rates if actual PG&E rates deviate from forecasts.

Another key consideration is how the recommended rate increase will compare if PG&E's rate change is delayed past January 1. In that case, MCE rates would temporarily be about \$7 per month higher than PG&E, for the typical household, before delivering significant customer savings during the remainder of the year.

### Sample Household Monthly Bill Comparison

	Current Charges	With \$0.04 Rate Change (No PG&E Rate Change)	Current PG&E Rates
Generation	\$47.70	\$66.10	\$56.22
Non-Gen (T&D)	\$90.89	\$90.89	\$90.89
PCIA & FF	\$9.57	\$9.57	\$12.25
Total	\$148.15	\$166.55	\$159.36

## Communications & Outreach

The proposed rates have been posted on MCE's website in the November Board packet and, as required by MCE's Implementation Plan, a thirty-one (31) day review period has been initiated to allow customers to provide comment on the proposed rate changes. MCE will provide notice to customers as follows:

- On-bill messages will inform customers of proposed rate adjustments and direct them to additional sources of information and opportunities to comment.
- MCE website banners and content will include summary information, proposed rate tables, information on upcoming Board and Committee meetings, and other opportunities for public comment.
- Newspaper notices will be printed (in English and Spanish) between now and early December in the:
  - Benicia Herald
  - Daily Republic
  - East Bay Times
  - Marin Independent Journal
  - Napa Valley Register
  - Vacaville Reporter
  - Vallejo Times
- Supplemental Spanish-language noticing will be issued with digital advertising.
- Staff will inform and engage with MCE's Community Power Coalition.
- Messages will be included in MCE's eNewsletter and social media accounts.

## Fiscal Impacts

Raising rates by \$0.04/kWh would add approximately \$51.1 million in revenue during FY 22/23 based on current market conditions, and is expected to ensure revenue sufficiency should costs continue to exceed forecasts. The rate adjustment would create a projected addition to Net Position for FY 22/23 of \$40.3 million and for FY 23/24 of \$131.1 million.

For FY 22/23, this would result in a cumulative Net Position of \$243 million out of the Reserve Target of \$324 million. For FY 23/24, this would result in a cumulative Net Position of \$375 million out of the forecast Reserve Target (based on increased energy costs) of \$394 million.

### Projected Change to Net Position FY 22/23 (Reserve Target: \$324 million)

	Current Forecast	Additional Revenue	Revised Forecast	Projected Total Reserves
\$0.03/kWh Increase	\$(10.5 million)	\$38.1 million	\$27.6 million	\$230.7 million
\$0.04/kWh Increase	\$(10.5 million)	\$50.8 million	\$40.3 million	\$243.4 million
\$0.05/kWh Increase	\$(10.5 million)	\$63.4 million	\$53.0 million	\$256.0 million

Projected Change in Net Position FY 23/24 (Forecast Reserve Target: \$394 million)

	Current Forecast	Additional Revenue	Revised Forecast	Projected Total Reserves
\$0.03/kWh Increase	\$(102.7 million)	\$175.4 million	\$72.7 million	\$303.3 million
\$0.04/kWh Increase	\$(102.7 million)	\$233.9 million	\$131.1 million	\$374.5 million
\$0.05/kWh Increase	\$(102.7 million)	\$292.3 million	\$189.6 million	\$445.6 million

**Recommendations:**

Staff recommends that the Board of Directors introduce a proposed increase to system average rates of \$0.04/kWh, for final approval at the next meeting of the Board of Directors, to take effect on January 1, 2023.





November 17, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: Resolution 2022-14 Amending MCE's Conflict of Interest Code (Agenda Item #08)

ATTACHMENTS: A. Resolution 2022-14 Amending MCE's Conflict of Interest Code  
B. Written Description of Changes  
C. MCE Conflict of Interest Code in Strikeout/Underline Format

Dear Board Members:

**Summary:**

The Political Reform Act ("the Act") (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and publish conflict of interest codes. The Conflict of Interest Code is intended to identify and disclose foreseeable disqualifying financial conflicts of interest for decision-makers within the agency and therefore provide transparency, as required by the Act. MCE's Conflict of Interest Code was last updated in July 2021. Pursuant to the Fair Political Practices Commission ("FPPC"), which has the primary responsibility to oversee the administration of the Political Reform Act, this Code must be regularly updated to reflect the current structure of the agency.

The updates to MCE's Conflict of Interest Code identify new positions created that must file Statements of Economic Interests to disclose their potential financial conflicts and removal of previously designated positions that are no longer active job descriptions.

MCE noticed the changes to its Conflict of Interest Code by distributing the proposed amendment and a Notice to Amend the Conflict of Interest Code to its employees.

**Fiscal Impacts:**

None.

**Recommendation:**

Adopt Resolution 2022-14 Amending MCE's Conflict of Interest Code.

## **RESOLUTION 2022-14**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AMENDING MCE'S CONFLICT OF INTEREST CODE**

**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**, On March 5, 2009, MCE (then, Marin Energy Authority) approved Resolution 2009-02, duly adopting a Conflict of Interest Code as required by the Political Reform Act (Government Code Section 81000, et seq.). MCE last amended its duly adopted Conflict of Interest Code on July 15, 2021, by approving Resolution 2021-06; and

**WHEREAS**, MCE wishes to amend Appendix A of its Conflict of Interest Code to update official employee designations by including recently added positions and enumerate the appropriate disclosure categories to all designated positions listed.

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

- A. The amended designated positions and assigned disclosure categories described in Appendix A are hereby incorporated into the MCE Conflict of Interest Code by reference.
- B. All officials and employees required to submit a statement of economic interests pursuant to Appendix A shall file their statements with the Chief Executive Officer or his or her designee. The Chief Executive Officer shall make and retain a copy of all statements filed. All retained statements, original or copied, shall be available for public inspection and reproduction (Government Code Section 81008).
- C. MCE hereby directs the Associate General Counsel to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years in accordance with the requirements of Government Code Sections 87306 and 87306.5. The revised Code should reflect any changes in official employee designations and/or disclosures. If no revisions to the Code

are required, MCE shall submit a report to the California Fair Political Practices Commission no later than October 1st of the same year, stating that amendments to the Code are not required.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 17th day of November, 2022, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
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 San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				

City of San Rafael				
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



## **WRITTEN EXPLANATIONS FOR THE PROPOSED AMENDMENT TO MCE CONFLICT OF INTEREST CODE**

Pursuant to the needs of MCE's business, the additions of new staff and the restructuring of existing staff by re-classifying their position titles were addressed in the proposed amendment to the Conflict of Interest Code. Upon review of existing positions and current disclosure regulations, MCE determined that disclosure categories needed revision and/or new and existing positions should be designated. Below is an explanation of new positions added, title changes to existing positions, and the applicable disclosure categories for the newly designated positions.

Manager of Internal Operations – Previously listed as Manager as Administrative Services, this position was reclassified to Manager of Internal Operations. Disclosure categories remain unchanged.

Principal Power Procurement Manager – This is a new position added to the MCE Team. This position discloses under categories 1, 2, and 3.

Director of Technology and Analytics – Previously listed as Manager of Technology and Analytics, this position was reclassified to Director of Technology and Analytics. Disclosure categories remain unchanged.

Chief Financial Officer – Previously listed as Director of Finance, this position was reclassified to Chief Financial Officer. Disclosure categories remain unchanged.

Manager of Human Resources – This position has been eliminated and is no longer a position for which staff may be recruited at MCE.

Chief of Staff – This is a new position added to the MCE Team. This position discloses under categories 1, 2, and 3.

Manager of Customer Operations – This is a new position added to the MCE Team. This position discloses under categories 1, 2, and 3.

Manager of Customer Care and Analytics – This position has been eliminated and is no longer a position for which staff may be recruited at MCE.

Manager of Marketing – Previously listed as Manager of Marketing and Communications, this position was reclassified to Manager of Marketing. Disclosure categories remain unchanged.

Manager of Strategic Initiatives – Previously listed as Director of Strategic Initiatives, this position has been reclassified to Manager of Strategic Initiatives. Disclosure categories remain unchanged.

Associate General Counsel – This is a new position added to the MCE Team. This position discloses under categories 1, 2, and 3.

Director of Policy – This position has been eliminated and is no longer a position for which staff may be recruited at MCE.

Senior Strategic Policy Manager – This is a new position added to the MCE Team. This position discloses under categories 1, 2, and 3.

Senior Policy Analyst – This position has been eliminated and is no longer a position for which staff may be recruited at MCE.

Regulatory and Legislative Policy Manager – This position has been eliminated and is no longer a position for which staff may be recruited at MCE.

**CONFLICT OF INTEREST CODE  
FOR  
MARIN CLEAN ENERGY**

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 California Code of Regulations Section 18730) that contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency's code. After public notice and hearing, the standard code may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation and the attached Appendices, designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of **Marin Clean Energy (MCE)**.

Individuals holding designated positions shall file their statements of economic interests with MCE, which will make the statements available for public inspection and reproduction. (Government Code Section 81008.) All statements will be retained by MCE.



## Marin Clean Energy Appendix A to the Conflict of Interest Code

### Designated Positions

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
• Chief Operating Officer	1, 2, 3
○ Manager of <del>Administrative Services</del> <u>Internal Operations</u>	1, 2, 3
○ Director of Power Resources	1, 2, 3
▪ <u>Manager of Power Resources</u>	1, 2, 3
▪ <u>Principal Power Procurement Manager</u>	1, 2, 3
▪ Senior Power Procurement Manager	1, 2, 3
▪ <u>Power Procurement Manager</u>	1, 2, 3
○ <u>Chief Financial Officer</u>	1, 2, 3
▪ <u>Manager of Finance</u>	1
○ <u>Director of Technology and Analytics</u>	1, 2, 3
○ <u>Director of Human Resources, Diversity, and Inclusion</u>	1, 2, 3
• <u>Chief of Staff</u>	1, 2, 3
○ Director of Customer Programs	1, 2, 3
▪ <u>Manager of Customer Programs</u>	1
○ <u>Director of Public Affairs</u>	1, 2, 3
▪ <u>Manager of Customer Operations</u>	1
▪ <u>Manager of Community and Customer Engagement</u>	1
▪ <u>Manager of Marketing</u>	1
○ <u>Manager of Strategic Initiatives</u>	1, 2, 3
• <u>General Counsel</u>	1, 2, 3
○ <u>Associate Director of Finance</u>	1, 2, 3
▪ <u>Manager of Finance</u>	
○ <u>Manager of Technology and Analytics</u>	1, 2, 3
• <u>Director of Human Resources, Diversity, and Inclusion</u>	1, 2, 3
○ <u>Manager of Human Resources</u>	1
• <u>General Counsel</u>	1, 2, 3
○ <u>Senior Legal Counsel</u>	1, 2, 3
○ <u>Legal Counsel</u>	1, 2, 3
○ <u>Director of Policy</u>	1, 2, 3
○ Senior Policy Counsel	1, 2, 3
○ <u>Policy Counsel</u>	1, 2, 3
○ <u>Senior Strategic Policy Manager</u>	1, 2, 3
○ <u>Senior Policy Analyst</u>	1, 2, 3
○ Policy Analyst	1, 2, 3
○ <u>Regulatory and Legislative Policy Manager</u>	1, 2, 3
• <u>Director of Public Affairs</u>	1, 2, 3
○ <u>Manager of Customer Care and Analytics</u>	1
○ <u>Manager of Community and Customer Engagement</u>	1
○ <u>Manager of Marketing and Communications</u>	1
• <u>Director of Strategic Initiatives</u>	1, 2, 3
• Consultants/New Positions	*

**\*Definition of Consultant and Note Regarding Disclosure Categories for Consultants/New positions:**

This category of designated positions includes consultants who make (not just recommend) governmental decisions, such as whether to approve a rate, rule, or regulation involving electric generation, adopt or grant MCE approval to design, develop, construct, sell, purchase, or acquire facilities that generate electricity, or adopt or grant MCE approval of policies, standards, or guidelines for MCE. Such consultants shall disclose at the same level as the comparable designated position identified elsewhere in the Code.

This category also includes all new/future positions that make or participate in making decisions including positions that perform comparable, the same, or substantially all the same duties for MCE as those that are being performed by an individual holding a designated position in MCE's Conflict of Interest Code. Such new positions shall disclose at the same level as the comparable designated position identified elsewhere in the Code.

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The following positions are NOT covered by the Conflict of Interest Code because they must file under Government Code Section 87200 and, therefore, are listed for informational purposes only:

Members of the Board of Directors  
Members of the Board of Directors (Alternates)  
Chief Executive Officer

An individual holding one of the above listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

**Marin Clean Energy  
Appendix B to the Conflict of Interest Code**

**Disclosure Categories:**

**Category 1:** Persons in this category shall disclose:

- (a) Investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources that provide services, supplies, materials, machinery, or equipment of the type utilized by MCE.
- (b) Interests in real property located within the jurisdiction of MCE or within two miles of the boundaries of the jurisdiction of MCE, or within two miles of any land owned or used by MCE.

**Category 2:** Persons in this category shall disclose investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources that engage in the design, development, construction, sale, or the acquisition of facilities that generate electricity, including, wind, solar, geothermal, hydroelectric, ocean, garbage, and biomass.

**Category 3:** Persons in this category shall disclose investments and business positions in business entities, and income, including receipt of loans, gifts, and travel payments, from sources that are energy or environmental consultants, research firms, or engineering firms, entities that design, build, manufacture, sell, distribute, or service equipment of the type that is utilized by electric power suppliers, including, wind, solar, geothermal, hydroelectric, ocean, garbage, and biomass, or any entity that is, or within the past 12 months has been, party to an MCE proceeding before any local, state, or regional regulatory or judicial entity.



November 17, 2022

TO: MCE Board of Directors

FROM: David Potovsky, Principal Power Procurement Manager

RE: Power Purchase Agreement with Humboldt House Geothermal LLC (Agenda Item #09)

ATTACHMENTS: A. Power Purchase Agreement with Humboldt House Geothermal LLC  
B. Humboldt House Geothermal Proposal Presentation

Dear Board Members:

**Background:**

MCE's 2022 Open Season 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 Humboldt House Geothermal LLC (Humboldt House) for the bundled renewable energy and RA from a new geothermal energy plant. The proposed facility would satisfy a portion of the aforementioned MTR obligation.

**Summary:**

The Humboldt House project is being developed by Open Mountain Energy (OME), and is sited in Pershing County, NV. The project is at a mature stage in the development process with a clear path to an interconnection agreement, full site control and a well-defined plan to acquire all relevant permits.

Staff negotiated the attached draft Power Purchase Agreement (PPA) for the purchase of bundled renewable energy and RA capacity from the project. The installation will have a contractually guaranteed nameplate capacity of 20 megawatts (MW). In addition to the incremental impact to the MTR compliance obligation, the contract will make a valuable contribution to MCE's energy and RA portfolio. The negotiated price is competitive within the current market, and the project is well positioned for success.

## **Project Benefits**

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

- Energy and 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 bundled energy and RA to other Load Serving Entities like Southern California Public Power Authority (SCPPA) and The City of Glendale. OME has also recently executed PPA's for new projects with California Community Power and Lassen Municipal Utility District (LMUD).
- All major pre-construction milestones are complete and the project is awaiting clearance to finalize the interconnection process

## **Additional Information:**

### Open Mountain Energy (OME)

- Headquartered in Lehi, Utah with 24 full-time employees
- Founded in 2016, OME develops, owns, and operates utility-scale geothermal power generation projects in North America.
- OME currently has two operating geothermal projects in California and Nevada, and has a pipeline of approximately 100 MW of projects in various stages of development.
- OME's parent company Kaishan Energy Group (Kaishan) manufactures the compressors that are utilized in OME's geothermal power plants. They have invested over \$1.2 billion dollars globally into geothermal projects in the US, Indonesia, Turkey, Kenya and Hungary. Kaishan is the world's leading manufacturer of geothermal energy generation equipment and the largest geothermal power operator in the world.

### Contract Overview

- Project: 20 MW geothermal generation facility
- Contracted resources: Bundled renewable energy and RA
- Price: Fixed with no escalation for the full delivery term

- Project location: Pershing County, Nevada
- Guaranteed commercial operation date: June 30, 2025
- Contract term: 21 contract years (Accounts for start date of 6/30/2025 and end date of 6/30/2045)
- Credit: No credit or collateral obligations for MCE
- Contractual milestone damages: 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 Sixty Thousand Dollars (\$60,000) 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/or renewable energy projects.

**Fiscal Impacts:**

There would be no impact on the Fiscal Year 2022/23 budget. Incremental costs would be accounted for starting in FY 2025/26.

**Recommendation:**

Authorize execution of the Power Purchase Agreement with Humboldt House LLC for supply of bundled renewable energy and resource adequacy.

FINAL DRAFT

**RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET****Seller:** Humboldt House Geothermal LLC, a Nevada limited liability company (“**Seller**”)**Buyer:** Marin Clean Energy, a California joint powers authority (“**Buyer**”)**Description of Facility:** A geothermal electricity generating facility located in Pershing County, Nevada with a generating capacity of 20 MW<sub>AC</sub>, as further described in Exhibit A.**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	Effective Date
<b>CEC Pre-Certification Obtained</b>	03/31/2023
<b>Documentation of Conditional Use Permit if required: [ ] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR, [X] NEPA</b>	01/31/2024
<b>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</b>	Effective Date
<b>Executed Interconnection Agreement</b>	03/31/2023
<b>Expected Construction Start Date</b>	09/30/2024
<b>Expected Date for Full Capacity Deliverability Status</b>	N/A
<b>Initial Synchronization</b>	04/30/2025
<b>Network Upgrades completed</b>	12/31/2024
<b>Expected Commercial Operation Date</b>	06/30/2025

**Delivery Term:** Twenty-one (21) Contract Years.**Expected Energy:**

<b>Contract Years</b>	<b>Expected Energy</b>
1 - 21	

**Guaranteed Capacity:** 20 MW

**Contract Price:** The Contract Price of the Product shall be:

Contract Year	Contract Price
1 - 21	

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Facility Energy
- ☒ Capacity Attributes
- ☒ Ancillary Services

**Scheduling Coordinator:** Seller /Seller Third Party

**Development Security and Performance Security:**

Development Security:

Performance Security:



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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of [\_\_\_\_], 2022 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

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

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

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

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

**“Available Generating Capacity”** means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

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

**“Bridge Capacity”** has the meaning set forth in 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 a.m. and ends at 5:00 p.m. 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, a California joint powers authority.

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

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

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

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

**“CAISO Operating Order”** means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewables portfolio standard program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California

Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the CPUC as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.10-03-021, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038, D.13-11-042, D.14-12-023, D.17-06-026, and D.19-02-007, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and any Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“CEQA”** means the California Environmental Quality Act.

**“Change of Control”** means, 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, at least 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 at least fifty percent (50%) of the outstanding equity interests in each such intermediate entity or entities; and

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

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

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

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

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.12.

**“Compliance Costs”** has the meaning set forth in Section 3.12.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.12.

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

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

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

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

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

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

**“Contract Year”** means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and end on December 31<sup>st</sup> of the first full calendar year thereafter and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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



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

“**CPUC Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings**” or “**CPUC Filing Guide**” means the document issued annually by the CPUC that sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program as 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.

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

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

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

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

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

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

“**Damage Payment**” means

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

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

**“Dedicated Interconnection Capacity”** has the meaning set forth in Section 4.10.

**“Deemed Delivered RA”** means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) the failure of Buyer to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO, or (ii) a Force Majeure Event as provided in Section 3.7(g).

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

**“Deficient Month”** has the meaning set forth in Section 4.8(d).

**“Delay Damages”** means Construction Delay Damages and Commercial Operation Delay Damages.

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

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

**“Development Cure Period”** has the meaning set forth in Exhibit B.

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

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

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

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

**“Electrical Losses”** means all transmission or transformation losses or gains for the Facility in accordance with CAISO’s rules for Pseudo-Tie Resources.

**“Eligible Renewable Energy Resource”** has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

**“Energy”** means electrical energy generated by the Facility.

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

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

**“Executed Interconnection Agreement Milestone”** means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

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

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

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

**“Facility”** means the geothermal generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

**“Facility Energy”** means, in any Settlement Interval or Settlement Period, the lesser of (a) the as-available electric energy generated by the Facility (i.e., the Energy), which is net of Electrical Losses and Station Use and delivered to the Delivery Point, as measured by the Facility Meter, and (b) the amount of energy (in MWh) specified in the Inter-SC Trade for such Settlement Interval or Settlement Period.

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

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

**“Firm Clean Resource”** means a resource that meets the requirements of CPUC D.21-06-035, Ordering Paragraph 2(b), as such decision has been interpreted by the CPUC in public guidance documents or other public communications issued prior to the Effective Date, including that such resource (i) is able to deliver firm power with a capacity factor of at least eighty percent (80%), (ii) is not subject to use limitations or weather dependent, (iii) is a generating resource, not storage, (iv) has zero on-site emissions or otherwise qualifies under the California Renewables Portfolio Standard (RPS) program eligibility rules as a PCC-1 resource, (v) is incremental to the CPUC’s baseline list, and (vi) is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.

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

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

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.8(a).

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

**“Future Environmental Attributes”** shall mean any and all emissions, air quality or other environmental attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to 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, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its avoided emissions of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state

or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

**“Guaranteed Capacity”** is set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 4 of Exhibit B.

**“Guaranteed Commercial Operation Date”** means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period pursuant to Section 3 of Exhibit B.

**“Guaranteed Construction Start Date”** means the Expected Construction Start Date, as such date may be extended by the Development Cure Period pursuant to Section 3 of Exhibit B.

**“Guaranteed Energy Production”** means [REDACTED] of the total Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

**“Guaranteed RA Amount”** is equal to [REDACTED]

**“Guarantor”** means, with respect to Seller, any Person that (a) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s or has a tangible net worth of at least [REDACTED], (d) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (e) executes and delivers a Guaranty for the benefit of Buyer.

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

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

**“Import Capability”** means that portion of the Maximum Import Capability allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.

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

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

**“Installed Capacity”** means the actual generating capacity of the Facility, not to exceed the Guaranteed Capacity, as measured in MW(AC) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

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

**“Law”** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority, and includes the CAISO Tariff.

**“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 and/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 (a) 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 or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

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

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and, in the case of Seller as the Non-Defaulting Party, Renewable Energy Incentives and Tax benefits determined on an after-tax basis which Seller has not been able to mitigate after use of reasonable efforts.

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

“**Maximum Import Capability**” has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.

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

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

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

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

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than Zero Dollars (\$0).

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

“**Net Qualifying Capacity**” or “**NQC**” means the net capacity of a resource that can be counted towards system Resource Adequacy Requirements, as identified from time to time by the CAISO Tariff, the Resource Adequacy Rulings, or by another Governmental Authority having jurisdiction.

“**Network Upgrades**” has the meaning set forth in the Transmission Provider’s open access transmission tariff.

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

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

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

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

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



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

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

**“Performance Measurement Period”** means each Contract Year during the Delivery Term; provided, that the Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

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

(a) A tangible net worth of [REDACTED] or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s; and

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

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

**“Planned Outage”** has the meaning set forth in Section 4.6(a).

**“PMAX”** means the applicable CAISO-certified maximum operating level of the Facility.

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

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

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1) and California Public Utilities Commission Decision 11-12-052, as may be amended from time to time or as further defined or supplemented by Law.

[REDACTED]

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

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

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable safety and reliability criteria, and the applicable 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.

**“Pseudo-Tie Resource”** means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as “unit-specific” or “resource specific” import RA Capacity pursuant to applicable decisions of the CPUC.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

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

**“RA Deficiency Amount”** means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

**“RA Guarantee Date”** means [REDACTED]

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.8 any Showing Month during which there is an RA Shortfall.

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

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

**“Renewable Energy Credit”** has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC D.08-08-028, as may be amended or supplemented from time to time or as further defined or supplemented by Law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Facility which shall be qualified and certified as an ERR.

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the 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 Green Attribute or a Future Environmental Attribute.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due. To the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, the Replacement RA must be from a Local Capacity Area Resource located within the same Local Capacity Area as the Facility.

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

**“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, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, 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.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

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

**“Scheduled Energy”** means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

**“Self-Schedule”** has the meaning set forth in the CAISO Tariff.

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

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be Zero Dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; provided that the Parties agree that Seller’s lost revenue under this Agreement resulting from a Buyer Default may be included in the determination of Losses.

“**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 generation and 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.

“**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 may be updated by Seller at the time it provides the Construction Start Date Certificate substantially in the form of Exhibit J; *provided* that any such update to the Site that includes real property that was not originally contained with or contiguous with the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion. “Site” does not include any land rights or interests in the real property constituting the Site that relate to or are used by other projects constructed or owned by any party to any Shared Facility Agreements. Any update provided by Seller in the Construction Start Date Certificate shall be automatically incorporated in Exhibit A upon its receipt by Buyer, unless Buyer’s approval is otherwise required, then it shall be incorporated into Exhibit A upon Buyer’s approval.

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

“**SP 15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

**“Station Use”** means:

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

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

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

**“System RA Penalty”**



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

**“Tax Credits”** means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

**“Technology Factor”** means the then-applicable monthly percentage published by the CPUC and used to establish Qualifying Capacity for non-dispatchable geothermal resources that have less than three (3) years of historical production and bidding data. The Parties acknowledge and agree that the Technology Factors vary from year to year and month to month.

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

**“Termination Payment”** has the meaning set forth in Section 11.3(b).

**“Test Energy”** means Energy delivered to the Delivery Point prior to the Commercial Operation Date.

**“Transformer Failure”** means failure of all or part of the main power transformer that results in the Facility being unable to generate Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice.

**“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. For purposes of this Agreement and as of the Effective Date, the Transmission Providers are set forth in Exhibit A.

**“Transmission System”** means the transmission facilities operated by NV Energy or any other Transmission Provider, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

**“Ultimate Parent”** means Open Mountain Energy, LLC, a Delaware limited liability company.

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

**“WREGIS”** means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.8(d).

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, however, that Buyer's

obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:

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

(b) A Pseudo-Tie Participating Generator Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect and Seller shall have provided Buyer a CAISO Resource ID and a PMAX, if applicable, for the Facility;

(c) If applicable, 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 such agreement delivered to Buyer;

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

(e) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied;

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

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has obtained firm transmission rights sufficient to deliver 20 MW to the Delivery Point and has provided documentation of the same to Buyer;



(i) Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(j) 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;

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

(l) 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;

(m) 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;

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

(o) Seller has paid Buyer for all undisputed amounts owing under this Agreement as of the Commercial Operation Date, if any, including Construction Delay Damages, and Commercial Operation Delay Damages, in each case, if any and to the extent owed.

**2.3 Development; Construction; Progress Reports.** Following the Effective Date, within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide a Progress Report to Buyer until the Commercial Operation Date and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably 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, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.4 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, 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, if known (e.g., governmental approvals, financing, property acquisition, design activities,

equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date (including any extension thereof); provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.5 Future Phases; Additional Projects.** Seller grants Buyer the right of first offer to evaluate and negotiate the purchase of the output of any additional phases of the Facility, as well as any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities as the Facility ("**Additional Facilities**"). Neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to any Additional Facilities to a party other than Buyer unless prior to selling or marketing the output from any such Additional Facilities, or entering into the agreement to sell, market or deliver any output from such Additional Facilities to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the output from such Additional Facilities on terms and conditions that Seller will offer to a third party. If Buyer accepts Seller's offer, subject to negotiation of final documents, by providing written notice of such acceptance to Seller by 5:00 p.m. PPT on or before the thirtieth (30<sup>th</sup>) day following Buyer's receipt of the offer (or if such thirtieth (30<sup>th</sup>) day is not a Business Day for Buyer, by 5:00 p.m. PPT on the next Business Day) (the "**Offer Deadline**"), then Seller shall thereafter negotiate in good faith with Buyer to finalize the terms of, and enter into, an agreement for the purchase and sale of such output on substantially the same terms of Seller's offer to Buyer. If Buyer and Seller are unable to finalize the terms of, and enter into, such agreement within forty-five (45) days following the Offer Deadline, Seller's offer shall be deemed rejected and the provisions of Section 2.5 shall no longer apply. If Buyer does not accept the Seller's offer by the Offer Deadline or is deemed to have rejected Seller's offer as provided in the foregoing sentence, then Seller will have the right to solicit offers and enter into one or more agreements for the purchase and sale of such output with Persons other than Buyer on the terms and conditions acceptable to Seller in its sole discretion.

## 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 and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion but subject to Section 5.2, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, subject to and without limiting Seller's right to retain CAISO revenues as described in Exhibit D, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component

thereof, purchased hereunder from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility, including reduction of delivery of Energy to the Delivery Point, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation or reduction.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** All Test Energy and related Environmental Attributes associated with such Test Energy are exclusively dedicated to and vested in, and an obligation of, Seller.

Seller shall have the right to monetize or otherwise secure the benefits of such Test Energy and related Environmental Attributes associated with such Test Energy on behalf of itself or any other Person and shall be entitled to retain proceeds in connection therewith.

### 3.7 **Capacity Attributes.**

(a) Prior to the Delivery Term, Seller shall qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO's New Resource Implementation process (as defined in the CAISO Tariff). Seller shall maintain the Facility as a Pseudo-Tie Resource in compliance with the CAISO Tariff throughout the Delivery Term.

(b) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes and Resource Adequacy Benefits, including Flexible Capacity, if any, available from the Facility. Subject to Section 3.12, Seller shall take all commercially reasonable administrative actions during the Delivery Term, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable the Buyer to use all the Capacity Attributes and Resource Adequacy Benefits committed by Seller to Buyer pursuant to this Agreement.

(c) Buyer shall use commercially reasonable efforts to obtain the Import Capability at the Delivery Point necessary to import the Guaranteed RA Amount from the Facility into the CAISO. Seller shall use commercially reasonable efforts to support Buyer in obtaining such Import Capability. To the extent Buyer does not or cannot maintain Import Capability at the Delivery Point, or an alternate location established pursuant to the terms of Exhibit A, as applicable, necessary to support the importation of the Guaranteed RA Amount into the CAISO for reasons other than a Seller failure under this Agreement, or the inability of Seller to maintain the Facility as a Pseudo-Tie Resource, the Capacity Attributes that are not imported or that cannot be imported shall constitute Deemed Delivered RA.

(d) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Facility's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Resource Adequacy Benefits provided to Buyer for each Showing Month.

(e) Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans have been accepted by the CAISO. If CAISO rejects either the Supply Plans or Buyer's Resource Adequacy Plans with respect to any part of the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plans or Resource Adequacy Plans for validation before the applicable Notification Deadline for the relevant Showing Month.

(f) If Seller anticipates that it will have an RA Shortfall Month, Seller may, provide Replacement RA in the amount of (i) the Guaranteed RA Amount with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity that is able to be included in the Supply Plans for such Showing Month plus any Deemed Delivered RA; *provided*, that any Replacement RA is communicated by Seller to Buyer in the form of Exhibit M by Seller to Buyer no later than the Notification Deadline.

(g) Notwithstanding anything to the contrary in this Agreement, Seller shall be permitted to reduce deliveries of Capacity Attributes and Resource Adequacy Benefits during any Force Majeure Event that results in Seller's inability, despite the use of commercially reasonable efforts, to deliver Delivered Energy to the Delivery Point.

### 3.8 **Resource Adequacy Failure.**

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month 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 then-applicable Guaranteed RA Amount for such month, minus (B) the then-applicable Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits and, if applicable, any Deemed Delivered RA, (the "**RA Shortfall Amount**"), multiplied by [REDACTED]

[REDACTED] provided that Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA to Buyer in an amount equal to all or a portion of the RA Shortfall Amount, provided that the Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within [REDACTED] after the Commercial Operation Date, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

### 3.10 **CPUC Mid-Term Reliability Requirements.**

(a) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC D.21-06-035.

Seller represents and warrants to Buyer that commencing on the Effective Date and continuing throughout the Contract Term:

(i) The Product includes the exclusive right to claim the Guaranteed Capacity of the Facility as an incremental resource for purposes of CPUC D.21-06-035;

(ii) Seller has not and will not sell, assign or transfer the right to claim the output of the Facility as an incremental resource for purposes of CPUC D.21-06-035 to any other person or entity; and

(iii) Seller will reasonably cooperate with Buyer to support Buyer's use of the Product to meet the procurement mandates set forth in CPUC D.21-06-035.

(b) Seller further acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental Firm Clean Resource capacity pursuant to CPUC D.21-06-035, Ordering Paragraph 2(b). In accordance with such requirements, as such decision has been interpreted by the CPUC in public guidance documents or other public communications issued prior to the Effective Date, Seller represents that the Facility shall meet the following requirements, subject to the terms of this Agreement:

(i) The Facility shall have zero on-site emissions or otherwise be eligible under the Renewables Portfolio Standard Program as a PCC1 resource;

(ii) The Facility shall have a capacity factor of at least [REDACTED];

(iii) The Facility shall be able to deliver every day, year-round;

(iv) The Facility shall not be use-limited;

(v) The Facility shall not be weather dependent;

(vi) The Facility is a generating resource, not storage; and

(vii) The Facility shall be eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings.

(c) In furtherance of Buyer's compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations (subject to redaction of commercially sensitive information), including but not limited to the following:

(i) Evidence of interconnection, site control, notice to proceed with construction, and other evidence of construction status and progress towards Commercial Operation;

(ii) Engineering assessments demonstrating that the Facility satisfies the foregoing requirements; and

(iii) Any other engineering assessments, contractual support, or relevant information required or requested by the CPUC pursuant to CPUC D.21-06-035.

### 3.11 **Non-Modifiable Standard Terms and Conditions.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) **Transfer of Renewable Energy Credits.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) **Tracking of RECs in WREGIS.** Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(d) **Applicable Law; Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

### 3.12 **Compliance Expenditure Cap.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and Capacity Attributes to meet various compliance requirements, and that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC including but not limited to CPUC D.21-06-035, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions from time to time to implement a change in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this

Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the Agreement to reflect any mandatory contractual language required by Governmental Authorities, including changes to the definition of Green Attributes and Capacity Attributes, or as may be required pursuant to CPUC D.21-06-035; (ii) require submission of any reports, data, or other information required by Governmental Authorities; (iii) provide additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; (iv) satisfy new compliance requirements of Governmental Authorities; or (v) take any other actions that may be requested by Buyer to assure that the Generating Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard, that the Facility is eligible for and can provide Capacity Attributes to Buyer and that the Facility qualifies under the Mid-Term Reliability Requirements; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at [REDACTED] per MW of Guaranteed Capacity (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 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 that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Term.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the



Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Facility Energy to Buyer at the Delivery Point, and Buyer shall take delivery of the Facility Energy at the Delivery Point in accordance with the terms of this Agreement. Seller shall effectuate the delivery of Facility Energy as a Pseudo-Tie Resource, and shall be responsible for securing such arrangements with CAISO and any Transmission Provider as are necessary in connection therewith. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer will be responsible for paying or satisfying any such costs or charges imposed in connection with Facility Energy at and after the Delivery Point. The Facility Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to and purchased by Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Facility Energy and has not sold the Green Attributes to any other person or entity, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

### 4.2 **Title and Risk of Loss.**

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

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

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

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer

a non-binding forecast of each month's average-day expected Available Generating Capacity, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

4.4 Scheduling of Energy. Unless otherwise agreed to by the Parties, on a daily basis by 2:00 pm Pacific Prevailing Time during the Delivery Term, Seller shall provide to Buyer a schedule of Energy for the day beginning 34 hours later as well as a non-binding forecast of expected Energy for the six days thereafter; provided that Seller shall be entitled to reduce the amount of energy scheduled with CAISO for any permitted reduction as set forth in Section 4.6(b) through (f) occurring after Seller has delivered its schedule of Energy to Buyer, subject to any requirements of the CAISO Tariff. The amount of Energy scheduled with Buyer in accordance with this Section 4.4 shall be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) to Buyer on a Day-Ahead basis using an Inter-SC Trade, as set forth in Exhibit D.

4.5 Station Use. Seller will be responsible for procuring and paying for all Station Use. Station Use will be provided by the Facility, other renewable resources installed by Seller, or retail service from the applicable utility. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Facility Energy supplied for Station Use.

4.6 Reduction in Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller shall provide to Buyer written schedules for scheduled maintenance for the Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) Business Days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of scheduled maintenance no later than ten (10) Business Days after receiving Buyer's comments. Subject to the foregoing, and except as otherwise agreed by the Parties in writing, Seller shall be permitted to reduce deliveries of Product during any such period of scheduled maintenance on the Facility so long as (i) such reduction in deliveries for scheduled maintenance does not conflict with the availability requirements required pursuant to CPUC D.21-06-035, OP 6, and (ii) between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (A) such outage is required to avoid damage to the Facility, (B) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (C) such outage is required in accordance with Prudent Operating Practice, and (D) the Parties mutually agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

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

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

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

(e) Buyer Default. Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

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

Seller will notify Buyer promptly of any reductions to scheduled Energy occurring as a result any event set forth in Sections 4.6(b) through (d) and Section 4.6(f) and will keep Buyer informed of any developments that will affect the duration of such reduction.

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

4.8 **WREGIS**. Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS reporting protocols and the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied its warranty under Section 3.11(c) to the extent Seller fulfills its obligations under Section 4.8(a) through (f). In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data. Subject to Section 3.12, Seller shall comply with any requirements of the CPUC, CEC, WREGIS and/or California Air Resources Board applicable to entities delivering RPS-eligible energy into the CAISO market from out-of-state projects applicable to WREGIS Certificate creation. Seller agrees to provide Buyer any such information as may be reasonably required by Buyer to comply with any requirements related to WREGIS Certificate creation, including the CPUC’s *PCC Classification Review Process Handbook*.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy invoiced by Seller to Buyer for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Product (as defined in Exhibit G) delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an

error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.9 **Green-e Certification.** Seller shall execute all documents or instruments reasonably required by Buyer in order for the Facility to be eligible for Green-E certification.

4.10 **Interconnection Capacity.** Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System. Seller shall ensure throughout the Delivery Term that (a) the Facility will have and maintain interconnection capacity available or allocable to the Facility under the Interconnection Agreement that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under the Interconnection Agreement to interconnect the Facility with the CAISO Grid and to allow Buyer to dispatch the Facility in accordance with the CAISO Tariff and as contemplated under this Agreement, including with respect to Resource Adequacy, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible (collectively, the "**Dedicated Interconnection Capacity**"). Buyer shall be entitled to all rights and benefits associated with the Dedicated Interconnection Capacity, including any associated deliverability rights. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the Dedicated Interconnection Capacity.

4.11 **Ancillary Services.** If, at any time during the Delivery Term, Buyer requests Seller to provide Ancillary Services that, are not currently available as of the Effective Date, but which may become recognized at a future date in the CAISO market (such as reactive power), and Seller is able to provide any such Product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such Product. If provision of any such new Product would have a material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such Product only if the Parties first execute an amendment to the Agreement with respect to such Product that reasonably addresses such material adverse effects. For the avoidance of doubt, provision of any Ancillary Services that results in an uncompensated reduction to the Facility Energy shall be deemed a material adverse effect on Seller's obligations or liabilities under this Agreement.

## 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 to evidence such exemption or exclusion within thirty (30) days after the Effective Date or Seller's request, as the case may be. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that the Facility is a phased portion of a geothermal resource, and as a result, certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder,

including providing the Dedicated Interconnection Capacity, (ii) continue to provide for separate metering and a separate Resource ID for the Facility, and (iii) shall not allow any Affiliate of Seller or third party to use the Dedicated Interconnection Capacity if such use would have an adverse impact on Buyer's dispatch rights of the Facility. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs or losses from CAISO or under the Agreement resulting from a third party's use of the Dedicated Interconnection Capacity.

## **ARTICLE 7 METERING**

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use in accordance with CAISO's rules for Pseudo-Tie Resources, in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Seller's Scheduling Coordinator shall cooperate to allow Buyer to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. In addition, upon Buyer's reasonable request, Seller shall test the meter on an annual basis. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, such period may not exceed twelve (12) months.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than ten (10) Business Days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy

produced by the Facility as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Facility Energy, Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C (such amounts, the “**Monthly Product Payments**”); (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount and the Monthly Product Payments; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment; provided, however, that except to the extent



recognized by and resulting in an adjustment by CAISO, there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. 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 upon request or 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 the Party seeking the adjustment 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 prior to the Commercial Operation Date, 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 and shall within five (5) Business Days after any draw thereon, replenish the Development Security in the event Buyer collects or draw down any portion of the Development Security for any reason permitted under this Agreement, other than to satisfy a Damage Payment or a Termination Payment; provided that Seller will have no obligation to replenish the Development Security in an aggregate amount greater than the limitation of liability set forth in Section 12.3. Except to the extent Seller elects to apply the Development Security to the Performance Security, 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.

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 a Guaranty, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, in which event Seller shall within five (5) Business Days after any such draw replenish the Performance Security, until the following have occurred (the "**Performance Security End Date**"): (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of the Seller arising 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 the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the 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 and continuance 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 as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means), at the time indicated by the time stamp upon delivery, and, if after 5:00 p.m. Pacific Prevailing Time, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

(a) **“Force Majeure Event”** means any act 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 otherwise satisfy the requirements of a Force Majeure Event as defined above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including in connection with efforts occurring after the Effective Date to combat the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (**“COVID-19”**); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events;

an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

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

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

**10.3 Notice.** Within five (5) Business Days of knowledge of commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of the Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods of time prior to delivery of such notice. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the 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 with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days 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 such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days 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 14.2 or 14.3, as applicable; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date, as such date may be extended by a Development Cure Period pursuant to Section 3 of Exhibit B;

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

(iv) the failure by Seller to achieve Construction Start within [REDACTED] days after the Guaranteed Construction Start Date, as such date may be extended by a Development Cure Period pursuant to Section 3 of Exhibit B;

(v) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason (which may include a Force Majeure Event or Transformer Failure) for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days;

(vi) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [REDACTED] of the total Expected Energy amount for such Contract Year; *provided* that if the cause of any such shortfall is a Transformer Failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice, then the energy not generated and delivered during such failure will be treated as Lost Output solely for purposes of this subsection, for a cumulative period not to exceed one-hundred eighty (180) days during such Contract Year;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least [REDACTED] of the total Expected Energy amount for such period; *provided* that if the cause of any such shortfall is a Transformer Failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice, then the energy not generated and delivered during such failure will be treated as Lost Output solely for purposes of this subsection, for a cumulative period not to exceed one-hundred eighty (180) days during such Contract Year;

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

(ix) 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;

(x) 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 sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

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



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

### 11.3 **Damage Payment; Termination Payment.**

(a) For an Early Termination Date designated as a result of a Seller Event of Default prior to the Commercial Operation Date under Section 11.1(b)(ii) or Section 11.1(b)(iv), Buyer shall be entitled to the Damage Payment pursuant to Section 11.2(b)(i), and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default under Section 11.1(b)(ii) or Section 11.1(b)(iv) would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a) are a reasonable approximation of Buyer's harm or loss. [REDACTED]

(b) For all other Events of Default, the termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Seller's liabilities and Buyer's remedies under this Section 11.3(b) in the event of an Early Termination Date prior to the Commercial Operation Date are subject to the limitations set forth in Section 12.3.

(c) Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect the Damage Payment or Termination Payment (as applicable) 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 Damage Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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

## **ARTICLE 12**

### **LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

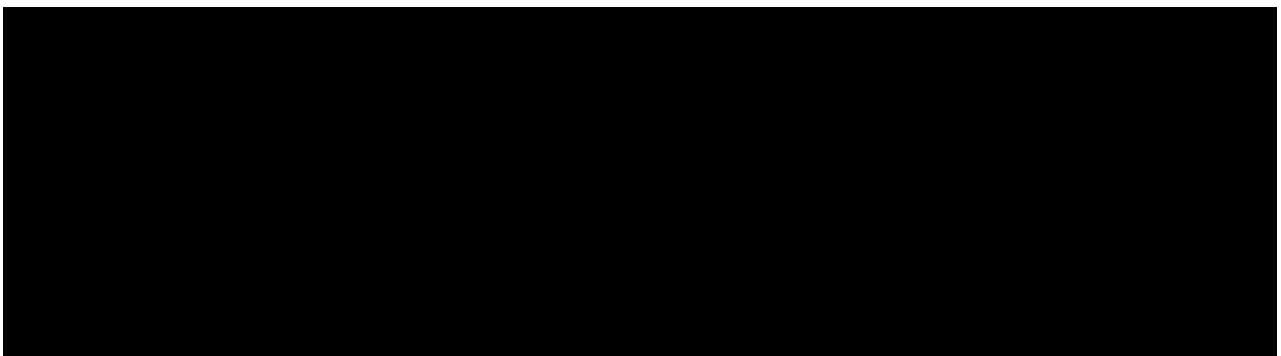
**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM BY A THIRD PARTY, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE 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, BY STATUTE, IN TORT OR CONTRACT.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES AND TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES AND TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS AND (UNLESS EXPRESSLY STATED TO THE CONTRARY), AN EXCLUSIVE REMEDY. 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 Nevada limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

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

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

(e) The Facility will be located in the State of Nevada.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, including to the extent applicable, Seller or an Affiliate will be the applicant on any CEQA documents.

(g) Seller shall maintain site control of the Facility throughout the Delivery Term.

(h) Except as set forth in Exhibit A, Seller shall maintain firm transmission rights sufficient to deliver twenty (20) MW to the Delivery Point throughout the Delivery Term.

(i) Seller shall comply with all CAISO Tariff requirements applicable to Pseudo-Tie Resources, including Appendix N to the Tariff, throughout the Delivery Term.

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

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

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

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim, and affirmatively waives, immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in

law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

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

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals, and permits 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 orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. In addition, Seller shall (i) ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages not less than the rate of such wages then prevailing in the region in which the Facility is located, as determined by the Nevada Labor Commissioner in the manner provided in Nevada Revised Statutes Section 338.030 (as may be amended from time to time), and are paid wages in compliance with Nevada Revised Statutes Section 338.020 (as may be amended from time to time) despite the Facility not constituting a public work under Nevada law, and permit no less than annual auditing by Buyer to verify such compliance (“**Prevailing Wage Requirement**”), or (ii) ensure that any construction work contracted by Seller in furtherance of this Agreement shall be conducted using a community workforce agreement, work site or project labor agreement, collective bargaining agreement, or other similar agreement related to construction of the Facility (“**Project Labor Agreement**”). The Facility may be eligible for a State of Nevada Renewable Energy Tax Abatement (“**RETA**”) agreement pursuant to Nevada Revised Statutes 701A.300-.390, inclusive, and Nevada Administrative Code Sections 701A.500-660, inclusive (the “**RETA Regulations**”). In lieu of complying with the Prevailing Wage Requirement, should Seller apply for and receive a RETA agreement, Seller may instead opt to comply with the requirements of the RETA Regulations, including the requirements of having a construction workforce comprised of no less than fifty percent (50%) Nevada residents, paying the construction workforce no less than one hundred seventy-five percent (175%) of the statewide average annual wage (as that phrase is defined in the RETA Regulations), and providing a health insurance plan satisfying the applicable requirements

of the RETA Regulations. If Seller does not execute a Project Labor Agreement for the construction of the Facility, at the time of Commercial Operation, Seller must certify that it has either complied with the Prevailing Wage Requirement or the RETA Regulations, and be able to demonstrate, upon Buyer's request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

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

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller, or direct or indirect change of control of Buyer (whether voluntary or by operation of law), will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

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

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

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

- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

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

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

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

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



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

(ii) Not assume this Agreement.

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

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

(i) The Parties shall negotiate any Collateral Assignment Agreement in good faith, including variations to the provisions set forth in this Section 14.2, and to the extent the Collateral Assignment Agreement executed by Buyer and Lender varies from such provisions, the terms of such Collateral Assignment Agreement shall be controlling. In addition, Buyer shall cooperate with Seller or any Lender to execute or arrange for delivery of estoppels reasonably requested by Seller or Lender.

**14.3 Buyer Limited Assignment.** Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("**Limited Assignee**") that has, or provides a parent guaranty, in form and substance reasonably acceptable to Seller from an entity with, a Credit Rating of at least A from S&P or Baa2 from Moody's of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment, which request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit S. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to

forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer and Seller's ability to make the representations and warranties contained therein. Limited Assignee and Buyer shall comply with all reasonable requests received by any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

## ARTICLE 15 DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its Affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

## ARTICLE 16 INDEMNIFICATION

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

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

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

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

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any third party in respect of the Indemnifiable Loss to which the indemnity payment

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

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

## ARTICLE 17 INSURANCE

### 17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained, at Seller's sole expense, (i) commercial general liability insurance, which shall be written on an "occurrence" basis (and not a "claims-made" or "claims reported" basis), and which shall include products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Four Million Dollars (\$4,000,000), and which shall provide contractual liability insurance in said amount; and (ii) umbrella or excess liability insurance policy that has at least as broad coverage as the commercial general liability insurance described in Section 17.1(a)(i) hereto with a limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Seller shall cause Buyer to be an additional insured on all of the insurance policies described in this Section 17.1(a).

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

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

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with a combined single limit of Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

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

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

(g) Umbrella Liability Insurance. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance requirements under Sections 17.1(a), (b) and (d) above.

(h) Contractor Insurance. Seller shall require all contractors under its engineering, procurement, and construction contract for the Facility to carry insurance of at least the same types and with at least the same limits as described in Sections 17.1(a-f). Such insurance must be procured and fully in place before commencement of any work by contractor. The contractor shall include Seller as an additional insured to insurance carried pursuant to this Section 17.1(h). The contractor shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(h).

(i) Evidence of Insurance and Other Insurance Requirements. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter (except insurance required in Section 17.1(h)), Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Regarding insurance required in Section 17.1(h), within ten (10) days after placement of such insurance and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Seller shall provide to Buyer a copy of any insurance policy required under this Article 17 within ten (10) days of a request by Buyer. Seller shall require all insurance policies required under this Article 17 obligate the insurer to provide Buyer at least thirty (30) days' prior Notice in the event of any cancellation or termination of coverage, and Seller shall not cancel or terminate any policy required under this Article 17 without prior written consent from Buyer. All insurance required under this Article 17 shall be primary coverage without right of contribution from any insurance of Buyer. The insurance requirements of this Article 17 do not affect, cap or limit Seller's obligations or liability to Buyer as provided under other provisions of this Agreement or applicable law, including any and all of Seller's indemnification obligations under the Agreement.

## ARTICLE 18 CONFIDENTIAL INFORMATION

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

source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain pricing and commercially sensitive provisions removed or redacted.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **Disclosure to Lenders, Etc..** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its agents or Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Limited Assignee, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have 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. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any

other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic and scanned signatures as originals. Delivery of an executed signature page of this Agreement by a PDF attachment to an email shall be the same as delivery of an original executed signature page.

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

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

19.10 **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.

19.11 **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.

**HUMBOLDT HOUSE GEOTHERMAL  
LLC, a Nevada 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:** Humboldt House Geothermal Project

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

**County:** Pershing County

**Type of Facility:** Geothermal

**Operating Characteristics of Facility:** artesian and pumped geothermal wells, steam and organic Rankine cycle power generation with hybrid cooling/condensing.

**Guaranteed Capacity:** 20 MW

**Delivery Point:** Mona, which is an Intertie (as defined in the CAISO Tariff), provided that if, pursuant to the provisions of Section 3.7(c), Buyer obtains Import Capability at Gonder, which is an Intertie (as defined in the CAISO Tariff), sufficient to import the Guaranteed RA Amount from the Facility into the CAISO, then Buyer may elect in writing to designate the Delivery Point as Gonder. If the Delivery Point is Gonder, the Contract Price will be reduced to [REDACTED]

**Transmission Provider:** NV Energy. For purposes of providing transmission service and not for any interconnection related obligations of Seller hereunder, LADWP.

**Interconnection Point:** The Facility shall interconnect to Thunder Mountain Switching Station in NV Energy's North System near Imlay, Nevada.

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Guaranteed Construction Start Date.
  
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. 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) days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice; [REDACTED]  
[REDACTED] Construction Delay Damages shall be refundable to Seller pursuant to Section 2b. 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)(ii) or 11.1(b)(iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The **“Commercial Operation Date”** shall be the later of (x) [REDACTED] prior to the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is 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 Seller achieves the Commercial Operation Date by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded by Buyer.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. Commercial Operation Delay Damages shall be paid in advance on a monthly basis by Seller to [REDACTED]  
[REDACTED] A prorated amount of Commercial Operation Delay Damages will be returned to Seller if the Commercial Operation Date occurs during a month in which the Commercial Operation Delay Damages were paid in advance. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights 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 30, 2025, upon the prior written request of Buyer, 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 Guaranteed RA Amount ("**Bridge Capacity**"), subject to the following terms and conditions:  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis for the duration of any and all delays arising out of the following circumstances:

a. a Force Majeure Event occurs; or

b.

[REDACTED]

c. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Day-for-day extensions under subsections (a) through (c) above shall not exceed [REDACTED]

[REDACTED] All of the day-for-day extensions allowed under subsections (a) through (d) above, collectively, are the “**Development Cure Period**”. Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) 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, or (iii) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of 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 written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable

satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] 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) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly and the Expected Energy shall be reduced to an amount equal to the product of (a) the amount of Expected Energy in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the Guaranteed Capacity.

## EXHIBIT C

### COMPENSATION

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

(a) Contract Price. Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Annual Excess Energy Deliveries.

(i) If, at any point in any Contract Year, the amount of Facility Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) [REDACTED] of the Contract Price, but not less than \$0.00/MWh.

(ii) If, at any point in any Contract Year, the amount of Facility Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Facility Energy.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("Excess Energy"), then the price applicable to all such Excess Energy in such Settlement Interval shall be Zero Dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess Energy.

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Facility Energy during any Curtailment Period.

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility for the delivery of Facility Energy to the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the PTO and CAISO Grid, (i) Seller shall take all actions to designate the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the PTO and CAISO Grid, and (ii) Seller shall, and shall cause its designee to, take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize Buyer or its designee to receive Guaranteed RA Amount from the Facility. On and after Initial Synchronization of the Facility to the PTO and CAISO Grid, Seller (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product in accordance with, and Seller shall schedule Energy into the CAISO market consistent with the requirements for resources used to meet CPUC D.21-06-035. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) to Buyer on a Day-Ahead basis using an Inter-SC Trade, as described in paragraph (b) below.

(b) Physical Trades. Before the deadline for submission of IST in the Day-Ahead Market, Seller and Buyer shall submit and match or cause their SCs to submit and match, a Physical Trade "from" Seller's Scheduling Coordinator "to" Buyer's Scheduling Coordinator at the Delivery Point. Such Physical Trade shall specify the MW amounts for the time periods as set forth in the Day-Ahead Schedule submitted by Seller to the CAISO in the Day-Ahead Market, which shall be established pursuant to Section 4.4. Such Physical Trades shall be entered in the Day-Ahead Market. With regard to such Physical Trades, Buyer shall perform (or cause to be performed) such actions as necessary to submit and validate a Physical Trade by the "to" Scheduling Coordinator, and Seller shall perform (or cause to be performed) such actions as necessary to match and validate a Physical Trade by the "from" Scheduling Coordinator in a Physical Trade.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided 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 (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. Buyer will reimburse Seller for any CAISO or any Transmission Provider costs or charges reasonably incurred by Seller because of Buyer's failure to perform its obligations under this Agreement. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are



imposed upon the Facility or to Buyer due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for 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 Seller's progress towards achieving the Milestones, including whether Seller has met or is on target to meet the Milestones, identification of any missed Milestones, including the cause of delay, and a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1****FORM OF AVERAGE EXPECTED ENERGY REPORT**

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
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AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2****FORM OF MONTHLY AVAILABLE CAPACITY FORECAST**Available Generating Capacity (in MWh) – *[Insert Month]*

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT G****GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Price for Replacement Product for the Contract Year, in \$/MWh, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

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

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

Buyer will send Seller Notice of the amount of damages owing, if any, and such amount shall be payable to Buyer within thirty (30) days from the date of such Notice.

As used above:

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

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

**“Replacement Energy”** means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and that is scheduled as an Inter-SC Trade to Buyer and delivered to a delivery point and upon a schedule that is reasonably acceptable to Buyer.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the

Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

**“Replacement Product”** means (a) Replacement Energy and (b) Replacement Green Attributes.

**EXHIBIT H****FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of Commercial Operation is delivered by [*Licensed Professional Engineer*] (“**Engineer**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*date*] (“**Agreement**”) by and between Humboldt House Geothermal LLC, a Nevada limited liability company (“**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. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
2. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
3. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
5. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications,
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [*Name of Participating Transmission Owner as appropriate*] on [*date*].
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [*Name of Participating Transmission Owner as appropriate*] on [*date*].
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [*date*].

EXECUTED by [*Licensed Professional Engineer*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*date*] ("**Agreement**") by and between Humboldt House Geothermal LLC, a Nevada limited liability company ("**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 that the performance test for the Facility demonstrated peak electrical output of [ ] MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [*Licensed Professional Engineer*]

this [ ] day of [ ], 20 [ ].

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Humboldt House Geothermal LLC, a Nevada limited liability company (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [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 [date] (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 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**



Wells Fargo Bank, N.A.  
U.S. Trade Services  
Standby Letters of Credit  
794 Davis Street, 9th Floor  
MAC 40283-0023  
San Leandro, CA 94577-6922  
Phone: (800) 776-3862 Option 2  
E-Mail: sbic-new@wellsfargo.com

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**Irrevocable Standby Letter Of Credit**

**Number:**  
**Issue Date:**

BENEFICIARY	APPLICANT
-------------	-----------

LETTER OF CREDIT ISSUE AMOUNT \_\_\_\_\_ EXPIRY DATE \_\_\_\_\_

LADIES AND GENTLEMEN:

FOR INFORMATIONAL PURPOSE ONLY. THIS STANDBY LETTER OF CREDIT (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "STANDBY LETTER OF CREDIT") IS ISSUED IN CONNECTION WITH THE POWER PURCHASE AGREEMENT, DATED AS OF \_\_\_\_\_ (AS AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME, THE "CONTRACT"), BY AND BETWEEN \_\_\_\_\_, ADDRESSED AT \_\_\_\_\_ (THE "CONTRACTOR"), A \_\_\_\_\_ LIMITED LIABILITY COMPANY AND A WHOLLY-OWNED SUBSIDIARY OF \_\_\_\_\_ ("YOU"), WHICH STIPULATES THAT THE CONTRACTOR SHALL FURNISH YOU WITH AN IRREVOCABLE UNCONDITIONAL STANDBY LETTER OF CREDIT BY A RECOGNIZED BANK FOR THE SUM OF USD \_\_\_\_\_ (SAY U.S. DOLLARS \_\_\_\_\_ ONLY)

WE, WELLS FARGO BANK N.A., 794 DAVIS STREET, 2ND FLOOR, MAC A0283-023, SAN LEANDRO, CALIFORNIA 94577-6692 U.S.A (HEREINAFTER CALLED THE "GUARANTOR") HAVE AGREED TO ISSUE THE STANDBY LETTER OF CREDIT ON BEHALF OF THE CONTRACTOR:

THEREFORE, WE HEREBY ENGAGE WITH YOU THAT AS ON BEHALF OF THE CONTRACTOR, WE AGREE TO PAY UP TO A TOTAL AMOUNT OF USD \_\_\_\_\_ (SAY U.S. DOLLARS \_\_\_\_\_ ONLY), AND WE UNDERTAKE TO PAY YOU, UNCONDITIONALLY AND INDEPENDENTLY, IN U.S. DOLLARS THE AMOUNT SPECIFIED IN THE APPLICABLE DEMAND (AS DEFINED BELOW) WITHIN FIVE BUSINESS DAYS FOLLOWING OUR RECEIPT FROM YOU OF A WRITTEN DEMAND IN THE FORM ATTACHED HERETO AS EXHIBIT I (A "DEMAND"), WHICH MAY BE SUBMITTED BY HAND OR MAILED TO THE FOLLOWING ADDRESS: WELLS FARGO BANK, N.A. 794 DAVIS STREET, 2ND FLOOR, MAC A0283-023, SAN LEANDRO, CALIFORNIA 94577-6692 U.S.A. SWIFT BIC:WFBUS6S.

WE WILL EFFECT PAYMENTS HEREUNDER TO THE ACCOUNT NUMBER SPECIFIED IN THE APPLICABLE DEMAND. FUNDS MAY BE DRAWN UNDER THIS STANDBY LETTER OF CREDIT, FROM TIME TO TIME, IN ONE OR MORE DRAWINGS, SUBJECT TO THE TERMS HEREIN, IN AMOUNTS NOT EXCEEDING IN THE AGGREGATE OF USD \_\_\_\_\_ (SAY U.S. DOLLARS \_\_\_\_\_ ONLY).

THIS STANDBY LETTER OF CREDIT SHALL BE VALID FROM ITS ISSUANCE AND EXPIRE ON \_\_\_\_\_ (THE "EXPIRY DATE").

ANY DEMAND IN RESPECT OF THIS STANDBY LETTER OF CREDIT SHOULD REACH US AT THE CONTACT INFORMATION SPECIFIED ABOVE NOT LATER THAN THE CLOSE OF OUR BUSINESS HOURS ON THE ABOVE EXPIRY DATE.

PAYMENT HEREUNDER SHALL BE MADE REGARDLESS OF:

(A) ANY WRITTEN OR ORAL DIRECTION, REQUEST, NOTICE OR OTHER COMMUNICATION NOW OR HEREAFTER RECEIVED BY US FROM THE APPLICANT OR ANY OTHER PERSON EXCEPT YOU, INCLUDING WITHOUT LIMITATION ANY COMMUNICATION REGARDING FRAUD, FORGERY, LACK OF AUTHORITY OR OTHER DEFECT NOT APPARENT ON THE FACE OF THE DOCUMENTS PRESENTED BY YOU, BUT EXCLUDING SOLELY AN EFFECTIVE WRITTEN ORDER ISSUED OTHERWISE THAN AT OUR INSTANCE BY A COURT OF COMPETENT JURISDICTION WHICH ORDER IS LEGALLY BINDING UPON US AND SPECIFICALLY ORDERS US NOT TO MAKE SUCH PAYMENT.

(B) THE SOLVENCY, EXISTENCE OR CONDITION, FINANCIAL OR OTHER, OF THE APPLICANT, THE CONTRACTOR OR ANY OTHER PERSON OR PROPERTY FROM WHOM OR WHICH WE MAY BE ENTITLED TO REIMBURSEMENT FOR SUCH PAYMENT, AND

(C) WITHOUT LIMITING CLAUSE (B) ABOVE, WHETHER WE ARE IN RECEIPT OF OR EXPECT TO RECEIVE FUNDS OR OTHER PROPERTY AS REIMBURSEMENT IN WHOLE OR IN PART FOR SUCH PAYMENT. WE AGREE THAT THE TIME SET FORTH HEREIN FOR PAYMENT OF ANY DEMAND(S) FOR PAYMENT IS SUFFICIENT TO ENABLE US TO EXAMINE SUCH DEMAND(S) AND ANY OTHER DOCUMENTS(S) WITH CARE SO AS TO ASCERTAIN THAT ON THEIR FACE THEY APPEAR TO COMPLY WITH THE TERMS OF THIS CREDIT AND THAT IF SUCH DEMAND(S) AND DOCUMENT(S) ON THEIR FACE APPEAR TO SO COMPLY, FAILURE TO MAKE ANY SUCH PAYMENT WITHIN SUCH TIME SHALL CONSTITUTE DISHONOR OF SUCH DEMAND(S) AND THIS CREDIT.

WE AGREE THAT IF, ON THE EXPIRY DATE OF THIS STANDBY LETTER OF CREDIT, THE OFFICE SPECIFIED ABOVE IS NOT OPEN FOR BUSINESS BY VIRTUE OF AN INTERRUPTION OF THE NATURE DESCRIBED IN THE "UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (2007 REVISION) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600" ("UCP 600") ARTICLE 36, THIS STANDBY LETTER OF CREDIT WILL BE DULY HONORED IF THE SPECIFIED DOCUMENTS ARE PRESENTED BY YOU WITHIN THIRTY (30) CALENDAR DAYS AFTER SUCH OFFICE IS REOPENED FOR BUSINESS.

THIS STANDBY LETTER OF CREDIT SHALL ONLY BE AMENDED, SUPPLEMENTED OR OTHERWISE MODIFIED PURSUANT TO AN AMENDMENT MADE BY US AT THE REQUEST OF THE APPLICANT.

THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE UCP 600 EXCEPT ARTICLE 36 AS STIPULATED ABOVE. AS TO MATTERS NOT GOVERNED BY THE UNIFORM CUSTOMS, THIS STANDBY LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. ANY LITIGATION ARISING OUT OF, OR RELATING TO THIS STANDBY LETTER OF CREDIT, SHALL BE BROUGHT IN A STATE OR FEDERAL COURT IN THE COUNTY OF LOS ANGELES IN THE STATE OF CALIFORNIA. GUARANTOR IRREVOCABLY AGREES TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN THE STATE OF CALIFORNIA.

YOU SHALL NOT BE BOUND BY ANY WRITTEN OR ORAL AGREEMENT OF ANY TYPE BETWEEN US AND THE APPLICANT OR THE CONTRACTOR OR ANY OTHER PERSON RELATING TO THIS CREDIT, WHETHER NOW OR HEREAFTER EXISTING.

ALL FEES AND OTHER COSTS ASSOCIATED WITH THE ISSUANCE OF AND ANY DRAWING(S) AGAINST THIS STANDBY LETTER OF CREDIT SHALL BE FOR THE ACCOUNT OF THE APPLICANT.

THIS STANDBY LETTER OF CREDIT IS ONLY PERSONAL TO YOU AND IS NOT ASSIGNABLE OR TRANSFERABLE, PROVIDED THAT YOUR RIGHTS HEREUNDER SHALL INURE TO YOUR SUCCESSORS BY OPERATION OF LAW.

GUARANTOR HEREBY EXECUTES THIS STANDBY LETTER OF CREDIT AS OF THE DATE FIRST WRITTEN ABOVE.

Very Truly Yours,

**WELLS FARGO BANK, N.A.**

By: \_\_\_\_\_  
*Authorized Signature*

***The original of the Letter of Credit contains an embossed seal over the Authorized Signature.***

Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

*at either* 794 Davis Street, 2<sup>nd</sup> Floor  
MAC A0283-023,  
San Leandro, CA 94577-6922

or 401 N. Research Pkwy, 1<sup>st</sup> Floor  
MAC D4004-017,  
WINSTON-SALEM, NC 27101-4157

Phone inquiries regarding this credit should be directed to our Standby Customer Service Connection Professionals

1-800-776-3862 Option 2  
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2  
(Hours of Operation: 8:00 a.m. EST to 5:00 p.m. EST)

EXHIBIT I

FORM OF DEMAND FOR PAYMENT

RE:STANDBY LETTER OF CREDIT NO. IS000298636U  
DATED

WELLS FARGO BANK, N.A.  
794 DAVIS STREET, 2ND FLOOR, MAC A0283-023  
SAN LEANDRO, CALIFORNIA 94577-6692 U.S.A.  
SWIFT BIC: WFBUS6S

TO WHOM IT MAY CONCERN:  
REFERENCE IS MADE TO THE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ DATED \_\_\_\_\_ IN THE  
AMOUNT OF USD \_\_\_\_\_ ESTABLISHED BY WELLS FARGO BANK, N.A. IN FAVOR OF \_\_\_\_\_, AS  
BENEFICIARY, FOR THE ACCOUNT OF \_\_\_\_\_ ON BEHALF OF OUR CLIENT: \_\_\_\_\_,  
AS APPLICANT (AS AMENDED, RESTATED, SUPPLEMENTED, EXTENDED OR OTHERWISE MODIFIED FROM TIME TO  
TIME, THE "STANDBY LETTER OF CREDIT"). CAPITALIZED TERMS USED HEREIN BUT NOT DEFINED HEREIN SHALL  
HAVE THE MEANINGS GIVEN IN THE STANDBY LETTER OF CREDIT. WE HEREBY NOTIFY YOU THAT THE  
CONTRACTOR \_\_\_\_\_ HAS FAILED TO FULFILL ITS OBLIGATIONS UNDER THE CONTRACT BY THE DATE  
REQUIRED UNDER THE CONTRACT, AND WE ARE ENTITLED TO PAYMENT UNDER THE STANDBY LETTER OF  
CREDIT IN ACCORDANCE WITH SECTION 8.7 OF THE CONTRACT.

DEMAND IS HEREBY MADE UPON YOU UNDER THE STANDBY LETTER OF CREDIT FOR PAYMENT TO US OF  
\_\_\_\_\_ BY DEPOSIT TO THE ACCOUNT SPECIFIED BELOW

ACCOUNT INFORMATION:  
BANK NAME:  
BANK ADDRESS:  
ACCOUNT NUMBER:  
ROUTING NUMBER:

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME:  
TITLE:  
DATE:  
ATTEST:  
NAME:  
TITLE:

## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [date] (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 Humboldt House Geothermal LLC, a Nevada limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_], 20\_\_\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

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

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant



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

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

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

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

provided that, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

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

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the

execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

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

If delivered to Buyer, to it at

[ ]

Attn: [ ]

Fax: [ ]

If delivered to Guarantor, to it at

[ ]

Attn: [ ]

Fax: [ ]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by and construed, enforced and performed in accordance with, the laws of the State of California, without regard to principles of conflicts of law. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

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

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

*[Signature on next page]*

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

GUARANTOR:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

BUYER:

[\_\_\_\_\_]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M****FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by Humboldt House Geothermal LLC, a Nevada limited liability company (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [date] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

**Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

[REDACTED]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT N****NOTICES**

<b>Humboldt House Geothermal LLC (“Seller”)</b>	<b>Marin Clean Energy (“Buyer”)</b>
<b>All Notices:</b> 3451 N. Triumph Blvd., Suite 201 Lehi, UT 84043 Attn: Manager Phone: 385-352-8858 Email: <a href="mailto:brady@openmountainenergy.com">brady@openmountainenergy.com</a>	<b>All Notices:</b> Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: [REDACTED]	<b>Reference Numbers:</b> Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
<b>Invoices:</b> Attn: Accounting Phone: 385-352-8858 Email: <a href="mailto:accounting@openmountainenergy.com">accounting@openmountainenergy.com</a>	<b>Invoices:</b> Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Scheduling:</b> Attn: Manager Phone: 385-352-8858 Email: <a href="mailto:brady@openmountainenergy.com">brady@openmountainenergy.com</a>	<b>Scheduling:</b> Attn: ZGlobal Phone: (916) 458-4080 Email: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a>
<b>Confirmations:</b> Attn: Manager Phone: 385-352-8858 Email: <a href="mailto:brady@openmountainenergy.com">brady@openmountainenergy.com</a>	<b>Confirmations:</b> Attn: Director of Power Resources Phone: (415) 464-6685 Email: <a href="mailto:Procurement@mcecleanenergy.org">Procurement@mcecleanenergy.org</a>
<b>Payments:</b> Attn: Accounting Phone: 385-352-8858 Email: <a href="mailto:accounting@openmountainenergy.com">accounting@openmountainenergy.com</a>	<b>Payments:</b> Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: <a href="mailto:Settlements@mcecleanenergy.org">Settlements@mcecleanenergy.org</a>
<b>Wire Transfer:</b> [REDACTED]	<b>Wire Transfer:</b> [REDACTED]
<b>With additional Notices of an Event of Default to:</b> Stoel Rives LLP Attn: Jennifer Martin Phone: (503) 294-9852 Email: <a href="mailto:jennifer.martin@stoel.com">jennifer.martin@stoel.com</a>	<b>With additional Notices of an Event of Default to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>
<b>Emergency Contact:</b> Attn: Phone: Email:	<b>Emergency Contact:</b> Attn: Phone: Email:



## **EXHIBIT O**

### **OPERATING RESTRICTIONS**

- Nameplate capacity of the Project: 20 MW
- Minimum capacity: 1 MW
- Ramp rate: 1 MW/minute

**EXHIBIT P**  
**METERING DIAGRAM**  
*[To be provided by Seller]*

## EXHIBIT Q

### COMMUNITY BENEFIT

Seller agrees to contribute [REDACTED] 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 prior to the Commercial Operation 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



### MCE Supplier Diversity Survey

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

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

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



\* Required

Email \*

Your email

Business Name \*

Your answer

Where is your business located/headquartered?

Your answer



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

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

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

If certified, when does your certification expire?

Date

mm/dd/yyyy 

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

Please choose all that apply.

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

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



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

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

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

Please list the Standardized Industrial Code (SIC) of the products and services contracted for. Reference sheet, here: [https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE\\_SIC\\_Commodity\\_Codes.pdf](https://www.mcecleanenergy.org/wp-content/uploads/2020/12/MCE_SIC_Commodity_Codes.pdf)

Your answer

If certified, please list a) your business's annual revenue as reported to the Supplier Clearinghouse and b) what was your revenue last year?

Your answer

If your business is qualified but not GO 156 certified, please explain why your business has not gone through the certification process, found here: <http://www.supplierdiversity.pro/apply.html>

Your answer



If your business used subcontractors for your MCE contract, please include a list of their business names, if their subcontract was for products or services, and their subcontract amount.

Example: Electrical Design Technology, Inc; products (batteries); \$100,000. If MCE is audited, we'll ask you for demonstration that subcontractor payments have occurred, such as a canceled check, bank statement, etc.

Your answer

---

What are your payment timelines for subcontracts - Net 30, Net 45?

Your answer

---

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

Your answer

---



Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements?

Local hires can be defined as labor sourced from within MCE's service area which includes the towns, cities, and unincorporated counties of Marin, Napa, Contra Costa, and Solano.

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

If you answered yes, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with MCE.

Your answer \_\_\_\_\_





Does your business pay workers prevailing wage rates or the equivalent?

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to [www.dir.ca.gov/Public-Works/Prevailing-Wage.html](http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html)

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

Is there anything else you'd like to add? If you'd like for us to promote your survey participation on our social media, please include your handles here.

Your answer

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

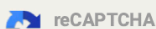
☐ Send me a copy of my responses.

Submit

Clear form



Never submit passwords through Google Forms.



## EXHIBIT S

### FORM OF LIMITED ASSIGNMENT AGREEMENT

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

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

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Limited Assignee the obligation to pay for all Assigned Products that are actually delivered to Limited Assignee pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that (A) PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to Limited Assignee consistent with Section 1(d) hereof), and (B) Limited Assignee and PPA Buyer’s respective payments during the Assignment Period shall be administered by a custodian who will transfer to PPA Seller on each payment due date the amounts paid by Limited Assignee and PPA Buyer with respect to each invoice (and it is anticipated that the custodian will consolidate the amounts received from Limited Assignee and PPA Buyer and make a single wire transfer to PPA Seller with respect to each invoice). To the extent Limited Assignee fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA (without regard to any additional cure period provided in Section 11.1(a)(i) of the PPA), notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment and that it will be an Event of Default pursuant to Section 11.1(a)(i) if PPA Buyer does not make such payment within five (5) Business Days (as defined in the PPA)

of receiving notice of such non-payment from PPA Seller. Notwithstanding the administration of payment obligations by a custodian, PPA Buyer and Limited Assignee shall be liable for their respective payment obligations in accordance with the terms and conditions of the PPA and this Agreement, including for any failure to receive payment from such custodian by the applicable payment due date.

- (c) Limited Assignee hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller in accordance with the PPA; (ii) PPA Buyer is hereby authorized by Limited Assignee to and shall act as Limited Assignee's agent with regard to scheduling Assigned Product; (iii) PPA Buyer will provide copies to Limited Assignee of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default, contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iv) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of annual forecasts and monthly forecasts of Facility Energy provided pursuant to Sections 4.3(a) and (b) of the PPA; (v) at Limited Assignee's request, PPA Seller will provide copies to Limited Assignee of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4 of the PPA, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to Limited Assignee; and (vi) PPA Buyer and PPA Seller, as applicable, will provide copies to Limited Assignee of any other information reasonably requested by Limited Assignee relating to Assigned Products.
- (e) PPA Seller acknowledges that (i) Limited Assignee intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Limited Assignee has the right to purchase from such intermediaries' receivables due from PPA Buyer for any such Assigned Products. To the extent Limited Assignee purchases from such intermediaries any such receivables due from PPA Buyer, Limited Assignee may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.
- (f) On or before the commencement of the Assignment Period, [Limited Assignee's Guarantor] ("**Guarantor**"), Inc. will issue, in favor of PPA Seller, a guaranty of Limited Assignee's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("**Guaranty**"). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.

- (g) Notwithstanding any other provision of this Agreement, PPA Buyer shall be entitled to retain for its own account all CAISO revenues associated with delivery of the Assigned Product to CAISO, including where PPA Buyer is acting as Scheduling Coordinator for the Facility (as defined in the PPA) and through scheduling of ISTs. Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs. As used in this clause (f), the following terms have the meanings specified below.

“**CAISO**” means California Independent System Operator or its successor.

“**CAISO Tariff**” means CAISO’s Federal Energy Regulatory Commission approved tariff, as modified, amended or supplemented from time to time.

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

“**Scheduling Coordinator**” 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.

- (a) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Limited Assignee and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.
- (b) Limited Assignee may not assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of PPA Seller; provided that, notwithstanding the foregoing, Limited Assignee may, without the consent of PPA Seller or PPA Buyer, assign this Agreement if either (i) the Guaranty continues to apply to the obligations of the assignee hereunder or (ii) the assignee (a) is an entity with a Credit Rating equal to or better than Limited Assignee’s Credit Rating at the time of the Effective Date, and (b) such assignee provides to PPA Seller a replacement guaranty, on terms that are substantially similar to the form of Appendix 3 or as otherwise acceptable to PPA Seller acting commercially reasonably, of its obligations issued by the Guarantor (“Replacement Guaranty”); provided further that Limited Assignee shall (1) no fewer than fifteen (15) Business Days before any such assignment, give Notice to PPA Seller and PPA Buyer of the particulars of such assignment and the proposed assignment agreement, and, if clause (ii) above in this paragraph applies, supporting documentation as to the assignee’s Credit Rating together with the proposed Replacement Guaranty, and (2) upon such assignment provide Notice to PPA Seller and PPA Buyer with a copy of the fully executed assignment agreement and, if applicable, such Replacement Guaranty executed and issued by Guarantor.

## 2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:

- (1) delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;
  - (2) delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day (as defined in the PPA) following receipt by Limited Assignee of written notice thereof;
  - (3) delivery of a written notice by PPA Seller if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to Limited Assignee (or any entity providing a parent guaranty on behalf of Limited Assignee); or
  - (4) delivery of a written notice by Limited Assignee if any of the events described in Section 11.1(a)(iv) of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) above.
- (c) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty, unless a Replacement Guaranty will take effect no later than the termination date of the Guaranty.
- (d) All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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

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

[Limited Assignee]

**5. Miscellaneous.** Article 12 (Limitation of Liability and Exclusion of Warranties), Sections 13.2(e) and (f) (Buyer's Representations and Warranties), Article 18 (Confidential Information), Sections 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.5 (Severability), 19.6 (Mobile-Sierra), 19.7 (Counterparts; Electronic Signatures), 19.8 (Binding Effect), and 19.9 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

**6. U.S. Resolution Stay Provisions.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and for the purposes of such incorporation, (i) Limited Assignee shall be deemed to be a Regulated Entity, (ii) each of PPA Buyer and PPA Seller shall be deemed to be an Adhering Party, and (iii) this Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

**7. Governing Law, Jurisdiction, Waiver of Jury Trial.**

- (a) Governing Law. This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.
- (b) Jurisdiction. Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco.
- (c) Waiver of Right to Trial by Jury. 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.

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

MARIN CLEAN ENERGY

By: .....  
Name:  
Title:

By: .....  
Name:  
Title:

[LIMITED ASSIGNEE]

By: .....  
Name:  
Title:

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

[ISSUER]

By: .....  
Name:  
Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Renewable Power Purchase Agreement, dated [\_\_\_\_], by and between Marin Clean Energy and Humboldt House Geothermal LLC, a Nevada limited liability company.

**“Assignment Period”** means the period beginning on [\_\_\_\_] and extending until [\_\_\_\_], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination. *[The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA.]*

**Assigned Product:** [Describe and define]

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





# Humboldt House Geothermal LLC Power Purchase Agreement MCE Board of Directors - November 17, 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"> <li>Resource Adequacy(RA)</li> </ul>	231 MW	Part 1 - 8/2023 Part 2 - 6/2024	<ul style="list-style-type: none"> <li>PV+4Hour Storage</li> <li>Stand-Alone Storage</li> <li>Wind</li> <li>Geo or Biomass</li> <li>Long-Term Imports</li> </ul>
DCPP Replacement (5 Hour)	<ul style="list-style-type: none"> <li>Zero emissions or RPS</li> <li>5MWh/1MW (HE18 - HE22)</li> </ul>	72 MW	6/2025	<ul style="list-style-type: none"> <li>PV+5Hour Storage</li> <li>Geo/Bio/Landfill gas</li> <li>Demand Response</li> </ul>
Long Duration Storage (8 Hour)	<ul style="list-style-type: none"> <li>8 Hours - full capacity discharge</li> </ul>	29 MW	6/2026	<ul style="list-style-type: none"> <li>Stand-Alone Storage</li> </ul>
Clean-Firm (Geo/Bio)	<ul style="list-style-type: none"> <li>Firm</li> <li>80% capacity factor</li> <li>Not weather dep or use-limited</li> <li>Zero emissions or RPS</li> </ul>	29 MW	6/2026	<ul style="list-style-type: none"> <li>Geothermal</li> <li>Biomass/Landfill gas</li> </ul>

# CPUC Mid-Term Reliability Mandate

Bucket	Requirements	MCE's Obligation	Online Date	Resource Options	
Generic	<ul style="list-style-type: none"> <li>Resource Adequacy(RA)</li> </ul>	231 MW	Part 1 - 8/2023 Part 2 - 6/2024	<ul style="list-style-type: none"> <li>PV+4Hour Storage</li> <li>Stand-Alone Storage</li> <li>Wind</li> <li>Geo or Biomass</li> <li>Long-Term Imports</li> </ul>	Humidor Contract executed 7/2022
DCPP Replacement (5 Hour)	<ul style="list-style-type: none"> <li>Zero emissions or RPS</li> <li>5MWh/1MW (HE18 - HE22)</li> </ul>	72 MW	6/2025	<ul style="list-style-type: none"> <li>PV+5Hour Storage</li> <li>Geo/Bio/Landfill gas</li> <li>Demand Response</li> </ul>	Golden Fields Contract executed 2/2022
Long Duration Storage (8 Hour)	<ul style="list-style-type: none"> <li>8 Hours - full capacity discharge</li> </ul>	29 MW	6/2026	<ul style="list-style-type: none"> <li>Stand-Alone Storage</li> </ul>	
Clean-Firm (Geo/Bio)	<ul style="list-style-type: none"> <li>Firm</li> <li>80% capacity factor</li> <li>Not weather dep or use-limited</li> <li>Zero emissions or RPS</li> </ul>	29 MW	6/2026	<ul style="list-style-type: none"> <li>Geothermal</li> <li>Biomass/Landfill gas</li> </ul>	#1 - Mayacma Executed 10/2022 <b>#2 - Humboldt House</b> #3 – TBA in December

# Overview: Humboldt House Geothermal LLC

- 20 MW Geothermal Energy Installation
- Pershing County, NV
- Best combination of economics and project viability



# Humboldt House Geothermal

- 20 MW of RA capacity
- 20 MW of renewable energy delivered around the clock
- On-line date: 6/30/2025
- 21 year term
- No credit/collateral obligations for MCE

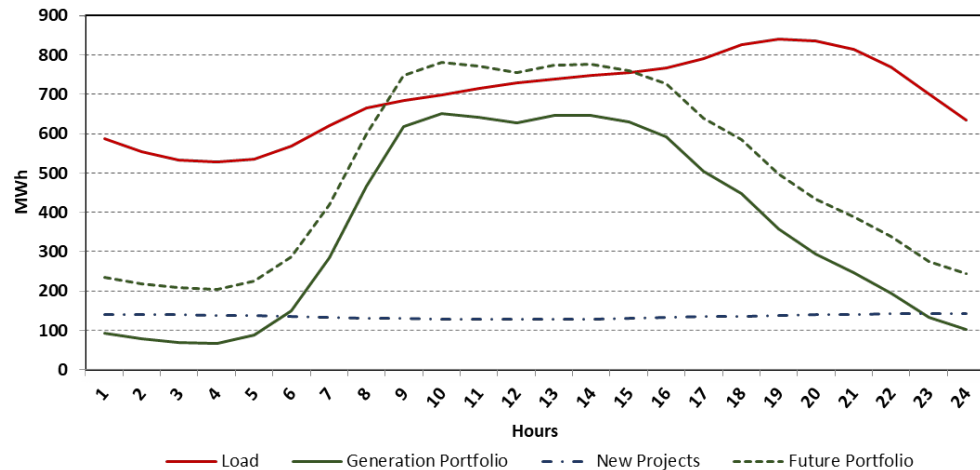


# Why target geothermal resources?

## Generation shape compliments MCE's existing portfolio of resources

- Helps fill open positions during important hours
- Incremental contribution towards matching load with renewable generation
- Hedge against expensive hours

Simulated effect of adding geothermal projects to MCE's existing portfolio - 2030 Snapshot





# Unique Terms & Conditions

- Financial incentives for performance
- Union labor requirement
- \$1,800,000 security deposit to ensure milestones are met
- Seller will make a one-time contribution of \$60,000 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

# Project Benefits

- Energy generation and 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. All major pre-construction milestones are complete. Awaiting clearance from CAISO to finalize the interconnection process.

# Recommendation

Authorize execution of the Power Purchase Agreement with Humboldt House LLC for supply of bundled renewable energy and resource adequacy

# Thank You

David Potovsky  
Principal Power Procurement Manager  
[dpotovsky@mceCleanEnergy.org](mailto:dpotovsky@mceCleanEnergy.org)

