

Technical Committee Meeting
Thursday, February 2, 2023
8:30 A.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/89373348901?pwd=bDlpYkg0bzJQWkRvS205UHNwejlOdz09>

Dial: 1-669-900-9128
Webinar ID: 893 7334 8901
Passcode: 193748

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Resolution No. 2023-01 Authorizing Remote Teleconference Meetings for the Technical Committee Pursuant to Government Code Section 54953(e) (Discussion/Action)
5. Report from Chief Executive Officer (Discussion)
6. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.3.22 Meeting Minutes

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7. Renewable Power Purchase Agreement with Wind Power Partners 1993, LLC. (Discussion/Action)
8. Adjustments to MCE Net Surplus Compensation (Discussion/Action)
9. Committee Matters & Staff Matters (Discussion)
10. Adjourn

The Technical Committee 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.



February 2, 2023

TO: MCE Technical Committee

FROM: Catalina Murphy, Associate General Counsel

RE: Resolution No. 2023-01 Authorizing Remote Teleconference Meetings for the Technical Committee Pursuant to Government Code Section 54953(e) (Agenda Item #04)

ATTACHMENTS: A. Proposed Resolution No. 2023-01 Authorizing Remote Teleconference Meetings for the Technical Committee Pursuant to Government Code Section 54953(e)
B. Resolution No. 2021-12 Delegating Authority to Technical Committee to Adopt Findings Pursuant to Government Code Section 54953(e)

Dear Technical Committee Members:

Summary:

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

On December 16, 2021, your Board delegated the authority to the Technical Committee to consider whether the Governor-designated state of emergency continues to directly impact the ability of the MCE Technical Committee to meet safely in person, and to make the required AB 361 findings for authorizing remote teleconference meetings under California Government Code section 54953(e).

Given the current emergency-state of the Covid-19 pandemic, there is an ongoing need for holding teleconference meetings for the MCE Technical Committee. Therefore, in order to hold teleconference meetings, the Technical Committee must make the following findings by majority vote:

¹ Gov. Code, §§ 54950 et seq.

1. The Technical Committee has reconsidered the circumstances of the state of emergency, as designated by the Governor.
2. The Technical Committee 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. 2023-01 Authorizing Remote Teleconference Meetings for the Technical Committee Pursuant to Government Code Section 54953(e), which makes the initial required AB 361 findings for authorizing remote teleconference meetings.

Fiscal Impacts:

None.

Recommendation:

Adopt proposed Resolution No. 2023-01 Authorizing Remote Teleconference Meetings for the Technical Committee Pursuant to Government Code Section 54953(e).

RESOLUTION 2023-01

A RESOLUTION OF THE TECHNICAL COMMITTEE OF MARIN CLEAN ENERGY AUTHORIZING REMOTE TELECONFERENCE MEETINGS FOR THE TECHNICAL COMMITTEE 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(e), 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, 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 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 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. 2021-12 delegating authority to the MCE Technical Committee to adopt certain findings in accordance with Government Code section 54953(e) for remote teleconference meetings for the Technical Committee;

WHEREAS, the MCE Technical Committee desires to hold the MCE Technical Committee public meeting by teleconference consistent with Government Code section 54953(e);

NOW, THEREFORE, BE IT RESOLVED, by the MCE Technical Committee:

- A. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
- B. The Technical Committee 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 and 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 Technical Committee on this 2nd day of February 2023, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
City of Lafayette				
City of Larkspur				
Town of Moraga				
City of Pinole				
City of San Ramon				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION NO. 2021-12**A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY DELEGATING AUTHORITY TO TECHNICAL COMMITTEE TO ADOPT FINDINGS 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, constituting Chapter 5 of Division 7 of Title 1 (commencing with Section 6500) of the California Government Code, as amended and supplemented (the “Act”); 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 continue to hold open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3), so long as certain findings are adopted by the legislative body every 30 days under Government Code Section 54953(e); and

WHEREAS, the Board of Directors previously adopted Resolution No. 2021-08 which delegated authority to the Executive Committee to adopt certain findings pursuant to Government Code section 54953(e) for continued remote teleconference meetings for the Board of Directors and any committee of the Board of Directors; and

WHEREAS, from time to time, the Board of Directors delegates certain rights and responsibilities to the Technical Committee; and

WHEREAS, the Board of Directors shall not be divested of any such authority as described herein, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion.

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 Board of Directors hereby delegates to the Technical Committee the authority to adopt findings necessary to hold meetings of the Technical Committee by teleconference in accordance with the requirements of Government Code section 54953(e) and Assembly Bill No. 361.

PASSED AND ADOPTED by the MCE Board of Directors on this 16th day of December, 2021, by the following vote:

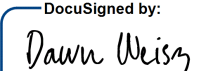
	AYES	NOES	ABSTAIN	ABSENT
County of Marin				X
Contra Costa County				X
County of Napa				X
County of Solano	X			
City of American Canyon				X
City of Belvedere	X			
City of Benicia	X			
City of Calistoga				X
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax	X			
City of Fairfield	X			
City of Lafayette	X			
City of Larkspur	X			
City of Martinez	X			
City of Mill Valley	X			
Town of Moraga	X			
City of Napa				X
City of Novato	X			
City of Oakley	X			
City of Pinole	X			
City of Pittsburg				X
City of Pleasant Hill	X			

City of San Ramon	X			
City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo				X
City of San Rafael	X			
City of Sausalito	X			
City of St. Helena				X
Town of Tiburon	X			
City of Vallejo	X			
City of Walnut Creek	X			
Town of Yountville				X

DocuSigned by:


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CHAIR, MCE**Attest:**

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SECRETARY, MCE

DRAFT

MCE TECHNICAL COMMITTEE MEETING MINUTES
Thursday, November 3, 2022
8:30 A.M.

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

Present: Mark Armstrong, Alternate, City of San Ramon
Gina Dawson, City of Lafayette
Kevin Haroff, City of Larkspur
Katy Miessner, City of Vallejo
Devin Murphy, City of Pinole
Katie Rice, County of Marin

Absent: John Gioia, Contra Costa County
Ford Greene, Town of San Anselmo
Teresa Onoda, Town of Moraga

**Staff
& Others:** Jesica Brooks, Assistant Board Clerk
Bill Pascoe, Senior Power Procurement Manager
Daniel Settlemyer, Internal Operations Coordinator
Dawn Weisz, Chief Executive Officer

1. Roll Call

Acting Chair Murphy called the regular meeting to order at 8:34 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no announcements.

3. Public Open Time (Discussion)

Acting Chair Murphy opened the public comment period and there were comments from member of the public, Howdy Goudey.

4. Report from Chief Executive Officer (Discussion)

CEO, Dawn Weisz, reported the following:

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- The McGlashan Award nomination requests are due November 4th. Staff will bring the nominees to the December Executive Committee to vote on the recipient and the award will be given at a full Board meeting.
- MCE is working on submitting a grant proposal to the U.S. Department of Energy for transportation electrification solutions identified by our community.
- MCE will be holding the regularly scheduled November and December Board meetings.
- Beginning in March, MCE is expected to resume in person Board and Committee meetings.

5. Consent Calendar (Discussion/Action)

- C.1 Approval of 9.16.22 Meeting Minutes
- C.2 Second Amendment to Amended and Restated Renewable Power Purchase Agreement Between Strauss Wind, LLC and Marin Clean Energy
- C.3 Second Amendment to Renewable Power Purchase Agreement Between Marin Clean Energy and Daggett Solar Power 3, LLC

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

Action: It was M/S/C (Rice/Miessner) to **approve Consent Calendars C.1 – C.3**. Motion carried by unanimous roll call vote. (Absent: Directors, Dawson, Gioia, Greene, and Onoda).

6. Approval of Operational Integrated Resource Plan (Discussion/Action)

Bill Pascoe, Senior Power Procurement Manager, introduced this item and addressed questions from Board members.

Acting Chair Murphy opened the public comment period and there were comments from members of the public, Hari Lamba, and Howdy Goudey.

Action: It was M/S/C (Rice/Dawson) to **approve MCE's 2023 Operational Integrated Resource Plan**. Motion carried by unanimous roll call vote. (Absent: Directors, Gioia, Greene, Haroff, and Onoda).

11. Committee Matters & Staff Matters (Discussion)

There were none.

12. Adjournment

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Acting Chair Murphy adjourned the meeting at 9:20 p.m. to the next scheduled Technical Committee Meeting on December 1, 2022.

Devin Murphy, Acting Chair

Attest:

Dawn Weisz, Secretary



February 2, 2023

TO: MCE Technical Committee

FROM: Paul Krebs, Power Procurement Manager

RE: Renewable Power Purchase Agreement with Wind Power Partners 1993, LLC. (Agenda Item #07)

ATTACHMENT: Renewable Power Purchase Agreement with Wind Power Partners 1993, LLC

MCE Technical Committee:

Background:

MCE's Open Season 2022 procurement process had three primary goals:

1. Add renewable resources that compliment MCE's load profile to mitigate MCE's exposure to market price volatility, especially during early morning and evening periods.
2. Meet Integrated Resource Planning (IRP) targets for renewable energy.
3. Add Resource Adequacy (RA) supply to the portfolio.

As a result of the solicitation, staff received an offer from Wind Power Partners 1993, LLC (Wind Power Partners) for the energy, Resource Adequacy (RA) and renewable attributes from an existing wind facility. The bundled renewable energy would make a valuable contribution to MCE's portfolio.

Summary:

Wind Power Partners is a 49.5 MW project, of which MCE would contract for 33 MW. The project is in Riverside County and has been operational since 2012.

Staff negotiated the attached draft Renewable Power Purchase Agreement for the purchase of energy, RA and renewable attributes from the project.

Rationale:

Wind Power Partners is a good fit for MCE's resource portfolio based on the following considerations:

- The facility delivers renewable energy during the early morning, late afternoon, and evening hours.
- Energy produced by the facility would complement MCE's existing portfolio of generation resources.
- The project reduces MCE's financial risk as it generates at times of the day when the California Independent System Operator's market prices are high.
- The project is operated by an experienced team and has been supplying renewable energy to other large-scale Load Serving Entities.

Additional Information:

Wind Power Partners 1993, LLC

- Wholly owned subsidiary of NextEra Energy Resources.
- NextEra Energy Resources is one of the world's largest generators of renewable energy with 16,000 MW of wind projects currently in operation across the United States.

Contract Overview

- 33 MW of nameplate capacity. MCE also has right of first refusal for the remaining 16.5 MW of the facility's output should seller decide to not allocate that capacity to its pilot project.
- Contract includes energy, RA and renewable attributes.
- Project location: Riverside, California.
- Guaranteed commercial operation date: January 1, 2025.
- Contract term: 15 years.
- Price is fixed with no escalation for the full delivery term.
- No credit or collateral obligations for MCE.
- Community Benefit Package: Seller pledges to contribute One Hundred Thousand Dollars (\$100,000) to community benefit initiatives that directly benefit stakeholders in MCE's service area and/or communities adjacent to the project location. MCE and seller will identify initiatives that are of mutual interest such as workforce training, environmental stewardship/habitat improvement, education, assistance to indigenous communities and renewable energy projects.

Fiscal Impacts:

There would be no impact on the Fiscal Year (FY) 2022/23 budget. Incremental costs would be accounted for starting in the FY 2024/25 budget.

Recommendation:

Authorize execution of the Renewable Power Purchase Agreement with Wind Power Partners 1993, LLC.

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Wind Power Partners 1993, LLC, a Delaware limited liability company (“**Seller**”)

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

Description of Facility: A dedicated and separately metered 33 MW wind energy generating located in Riverside County, California, as further described in Exhibit A; *provided, however*, that if Buyer elects to contract for the Option Capacity (if available), the Facility will increase to 49.5 MW.

Contract Price: [REDACTED] The Contract Price will remain the same throughout the Delivery Term of this Agreement without escalation.

Delivery Commencement Date: January 1, 2025

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

Expected Energy: [REDACTED] during the first Contract Year and for each Contract Year thereafter during the Delivery Term. Provided, however, that if Buyer elects to contract for the Option Capacity (if available), the Expected Energy will be [REDACTED] for each Contract Year.

Contract Capacity: 33 MW; *provided, however*, that if Buyer elects to contract for the Option Capacity (if available), the Contract Capacity will increase to 49.5 MW.

Option Capacity: 16.5 MW.

Product: Buyer’s Fraction of the following:

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

Scheduling Coordinator: Buyer or Buyer’s agent

Performance Security: [REDACTED] per MW of Contract Capacity

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of [], 2023 (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 owns, controls, and operates the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.9(d).

“**Actual Availability**” has the meaning set forth in Exhibit E.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee,” “control,” “controlled by,” and “under common control with,” as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person; or (b) the right to direct the policies or operations of such Person. In addition, for the purposes of this Agreement, the term “Affiliate,” when used in connection with Seller, shall include NEP, NEOP, NEER, NEECH, and NEE and their respective direct or indirect Affiliate subsidiaries, with respect to Seller and one another.

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

“**Annual Excess Energy Cap**” has the meaning set forth in Exhibit B.

“Authorized Transfer” means any of the following:

- (i) transactions between or among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests between or among Affiliates of Seller;
- (ii) any exercise by the Lender (including any tax equity investor) of its rights and remedies under any financing documents;
- (iii) a Change of Control of NEE, NEECH, or NEER;
- (iv) any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;
- (v) the direct or indirect transfer of shares of, or equity interests in, the Seller to a tax equity investor; or
- (vi) a transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following (1) a transfer of all or substantially all of the assets of NEER, NEECH or NEE; (2) a transfer of all or substantially all of NEER’s renewable energy generation portfolio; (3) a transfer of all or substantially all of NEER’s wind generation portfolio; or (4) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an affiliate of NEER continues to hold an economic interest in the Facility; provided, following any such transfer under (1) through (4) above, (A) the entity that operates the Facility is (or contracts with) a Qualified Operator, and (B) Seller (or such person) maintains the applicable Seller’s performance assurance required by the Agreement.

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

“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 that remains unstayed or undismissed for a period of ninety (90) days; (c) makes an assignment or any general arrangement for the benefit of creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) is generally unable to pay its debts as they fall due.

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

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

“Buyer Bid Curtailment” means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers, or schedules the Facility, the Energy, or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted to be produced from the Facility for a period of time; and

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

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

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

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

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

“Buyer Curtailment Order” means (a) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event, or Curtailment Order; or (b) a reduction of Facility Energy directed by CAISO during Settlement Intervals with a Negative LMP.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer’s Default; provided that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Buyer’s Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, including an Event of Default of Buyer.

“Buyer’s Fraction” means the ratio, expressed as a percent, of the Contract Capacity to the Installed Capacity. At the Effective Date, the Buyer’s Fraction is equal to 100%.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.7(a).

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

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

“CAISO Charges Invoice” has the meaning set forth in Exhibit C.

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

“CAISO Operating Order” means “Operating Instruction,” as defined in the CAISO Tariff.

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

“CAISO VER Forecast” means the forecast of output provided by CAISO pursuant to Section 4.8.2.1.2 and Appendix Q of the CAISO Tariff, as such provisions may be modified or amended from time to time.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with Buyer’s Fraction of 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 or used for compliance purposes, including Resource Adequacy Benefits.

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

“CEC Certification and Verification” means that the CEC has certified 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.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means any circumstance in which Ultimate Parent ceases to own, either (i) directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller or (ii) otherwise ceases to retain the ability to control the decision making of Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

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

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

(c) a Change of Control shall not be deemed to include any Authorized Transfer.

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

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

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

“Compliance Action” has the meaning set forth in Section 3.9(b).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.9(b).

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

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

“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. The first Contract Year shall commence on the first day of the first calendar month that commences following the Effective Date and each subsequent Contract Year shall commence on the anniversary of the Effective Date.

“Costs” mean, with respect to the Non-Defaulting Party, brokerage fees, breakage costs, 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 that replace the Agreement, and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

"COVID-19 Pandemic" means the COVID-19 pandemic declared by the World Health Organization on March 11, 2020 resulting from the spread of SARS-CoV-2 viral infections in humans and including successor outbreaks of COVID-19 resulting from the spread of SARS-CoV-2 viral infections in humans thereafter.

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

"Credit Rating" means, with respect to any entity, on any date of determination, the respective rating then assigned to such entity's senior unsecured long-term debt or deposit obligations (not supported by third party credit enhancement) by a Rating Agency or, in the absence of such a rating, the issuer rating then assigned to such entity by a Rating Agency.

"Credit Requirements" means that such entity's Credit Rating from at least two Ratings Agencies is equal to or greater than BBB- from S&P, Baa3 from Moody's, or BBB- from Fitch.

"Curtailement Cap" is the yearly quantity per Contract Year, in MWh, equal to [REDACTED] multiplied by the Contract Capacity.

"Curtailement Order" means any of the following:

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

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

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

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

the Participating Transmission Owner or distribution operator, or Seller's obligations under any agreements with a Governmental Authority.

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

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

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

"Dedicated Interconnection Capacity" has the meaning set forth in Section 4.9.

"Deemed Delivered Energy" means the amount of Energy that the Facility would have produced and delivered to the Delivery Point but is not produced by the Facility during a Buyer Curtailment Period or Buyer's unexcused failure to take delivery of the Product, which amount shall be equal to (a) the CAISO VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no CAISO VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the CAISO VER Forecast does not represent an accurate forecast of generation from the Facility, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Generating Capacity, and wind speed, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

"Deficient Month" has the meaning set forth in Section 4.7(e).

"Delivery Commencement Date" has the meaning set forth on the Cover Sheet.

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

"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” mean all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with the delivery of Facility Energy to the Delivery Point.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy measured in MWh.

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

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

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

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

“Facility” means the 33 MW wind energy 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 Facility Energy to the Delivery Point.

“Facility Energy” means the Energy generated by the Facility during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, including adjustments in accordance with CAISO meter requirements to account for Electrical Losses and Station Use.

“Facility Meter” means the means the revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment, and data acquisition services sufficient for monitoring, recording, and reporting, in real time, the amount of Facility Energy generated by the Facility for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together, which is CAISO Approved Meters and will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low-voltage side of the main step-up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use, as it impacts delivered Energy.

“FERC” means the Federal Energy Regulatory Commission.

“Fitch” means Fitch Ratings, Inc.

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

“Flexible Resource Adequacy Benefits” mean the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load-serving entity, including Flexible Capacity.

“Forecasting Penalty”



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

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Form of Monthly Delivery Forecast” has the meaning set forth in Section 4.3(b).

“Forward Certificate Transfers” has the meaning set forth in Section 4.7(a).

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

“Future Environmental Attributes” shall mean Buyer’s Fraction of any and all generation attributes other than Green Attributes under the RPS regulations or under any and all other international, federal, regional, state, or other law, rule, regulation, bylaw, treaty, or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market, or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets, and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” mean, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement; and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement and the present value of the payments required to be made during the remaining Contract Term of this Agreement. Factors used in determining the economic

benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads, or other relevant market data in the relevant markets; comparable transactions; forward price curves based on economic analysis of the relevant markets; and settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and include the value of Green Attributes and Capacity Attributes.

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

“Green Attributes” mean any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include, but are not limited to, Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) 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 1 MWh of Facility Energy. Green Attributes do not include (a) any energy, capacity, reliability, or other power attributes from the Facility; (b) production tax credits and investment 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; (c) 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 (d) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

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

“Guaranteed Availability” means (a) commencing on the first Contract Year through and including the end of the tenth Contract Year, an actual mechanical availability percentage of [REDACTED] for the applicable Performance Measurement Period; and (b) commencing on the eleventh Contract Year through and for the remainder of the Delivery Term, an actual mechanical availability percentage of [REDACTED] for the applicable Performance Measurement Period.

“Guaranteed RA Amount” means Buyer’s Fraction of the Facility’s net qualifying capacity as determined by CAISO.

“Guarantor” means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer; (b) satisfies the Credit Requirements; (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction; and (d) 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 G or in such other form as is reasonably agreed to by the Parties.

“Guaranty Default” means, with respect to a Guaranty or the Guarantor under such Guaranty, the occurrence of any of the following events, unless the Defaulting Party delivers to the Non-Defaulting Party either (a) a replacement Guaranty in the same face amount and on substantially the same terms as the outstanding Guaranty, or (b) a replacement Letter of Credit issued or confirmed by a Qualified Institution in the same face amount and on substantially the same terms as the outstanding Guaranty, in each case on or before the tenth (10th) Business Day after notice from the Non-Defaulting Party: (i) such Guaranty expires or terminates, or fails or ceases to be in full force and effect in accordance with its terms against such Guarantor, in any such case without replacement, before the satisfaction of all obligations under this Agreement of the Party whose obligations are guaranteed under such Guaranty; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty; (iv) such Guarantor becomes Bankrupt; or (v) the Guarantor fails to satisfy the requirements for an acceptable Guarantor as set forth in the definition of Guarantor. No Guaranty Default will occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Imbalance Energy” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

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

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

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

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW at the Delivery Point. As of the Effective Date, the Installed Capacity is 33 MW.

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

“Interconnection Facilities” mean 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 Code.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated December 19, 2008, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit, or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back-leverage, or long-term debt, equity, or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt, or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf; (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations; (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility; or (d) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or in connection with the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit F.

“Letter of Credit Default” means, with respect to a Letter of Credit or the issuer thereof, the occurrence of any of the following events, unless the Defaulting Party will deliver to the Non-Defaulting Party a replacement Letter of Credit issued or confirmed by a Qualified Institution in the same face amount and on substantially the same terms as the outstanding Letter of Credit on or before the fifteenth (15th) Business Day after such notice if only the following clause (a) applies): (a) if the Letter of Credit is not confirmed by a Qualified Institution or such issuer fails to meet the requirements for a Qualified Institution; (b) such issuer disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (c) such Letter of Credit fails or ceases to be in full force and effect at any time; (d) such Letter of Credit is not renewed at least forty-five (45) Business Days before the expiration of such Letter of

Credit in accordance with its terms, or such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect, at any time during the Term; or (e) such issuer becomes Bankrupt; *provided, however*, that no Letter of Credit Default will occur or be continuing with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

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

“Limited Assignee” has the meaning set forth in Section 14.4.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local Capacity Area Resource Adequacy Benefits” mean the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load-serving entity, expressed in kilowatts.

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

“Losses” mean, 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, 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, and 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 and Capacity Attributes. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third-party information to determine the economic loss, then the Non-Defaulting Party may use information available to it internally suitable for these purposes.

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

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

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

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

“**NEE**” means NextEra Energy, Inc., a Delaware corporation.

“**NEECH**” means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

“**NEER**” means NextEra Energy Resources, LLC, a Delaware limited liability company.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP in the Real-Time Market at the Facility’s PNode is less than zero dollars (\$0).

“**NEOP**” means NextEra Energy Operating Partners, LP, a Delaware limited partnership

“**NEP**” means NextEra Energy Partners, LP, a Delaware limited partnership.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, U.S. mail, overnight courier service, or electronic messaging (email).

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

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

“**Option Capacity**” means the meaning set forth on the Cover Sheet.

“**Pacific Prevailing Time**” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates, and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Year period during the Delivery Term.

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

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

(i) A tangible net worth of [REDACTED] or a Credit Rating of at least BBB- from S&P or BBB- from Fitch; and

(ii) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility or has retained a Qualified Operator.

“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 4.5(a).

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

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

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

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

“Prudent Operating Practice” means (a) the applicable practices, methods, and acts required by or consistent with applicable Laws and reliability criteria and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States; or (b) any of the practices, methods, and acts that, 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 reliability criteria, and the criteria, rules, and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules, and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the Code.

“Qualified Issuer” means a U.S. commercial bank or a U.S. branch office of a foreign bank that has (i) a Credit Rating of “A-” or better by S&P, “A3” or better by Moody’s, or A- or higher by Fitch, and (ii) assets of at least \$10,000,000,000.

“Qualified Operator” means a person that has at least two (2) years of experiencing operating and maintaining wind energy generation facilities with an aggregate capacity of no less than three hundred (300) MW.

“RA Deficiency Amount” has the meaning set forth in Section 3.6(b).

“RA Guarantee Date” means the Delivery Commencement Date.

“RA Shortfall Amount” has the meaning set forth in Section 3.6(b).

“RA Shortfall Month” means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide System Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

“Rating Agency” means any of S&P, Moody’s, or Fitch.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity or hourly expected Facility Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

“Real-Time Price” means the resource-specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

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

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

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

“Replacement RA” means Resource Adequacy Benefits equivalent to those that would have been provided by the Facility with respect to the applicable RA Shortfall Month, including, if applicable for such month, Flexible Resource Adequacy Benefits associated with the Facility.

“Resource Adequacy Benefits” mean 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.

“Resource Adequacy Rulings” mean CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules, or regulations may be amended or modified from time to time throughout the Delivery Term.

“Resource ID” has the meaning set forth in the CAISO Tariff.

“Restricted Transferee” means any counterparty to a power purchase agreement or similar offtake arrangement engaged, currently or in the preceding three (3) years, in a power purchase, energy, or capacity-related dispute with Buyer where the amounts in dispute are in excess of [REDACTED] designated by Buyer in accordance with Section 14.5.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction, or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” of the CAISO Tariff, as amended from time to time. The Buyer or an agent of Buyer will be the Scheduling Coordinator for the Facility as set forth in the Cover Sheet.

“Security Interest” has the meaning set forth in Section 8.8.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

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

“Seller Compliance Curtailment” shall mean the period of time during which the Facility is partially or fully curtailed by Seller for the purpose of complying with applicable Law or the instruction of a Governmental Authority.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.7(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall

be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages.

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

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

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that, for the Contract Term, Seller: (a) owns or has the option to purchase the Site, (b) is the lessee or has the option to lease the Site, or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The Energy produced 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 (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“System Resource Adequacy Benefits” mean the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load-serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits, expressed in kW.

“Tax” or **“Taxes”** mean all U.S. federal, state, 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” mean 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.

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

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

“Transformer Failure” means a failure preventing delivery of Product, excluding a failure caused by the acts or omissions of Seller, with respect to all or part of the transformer, the circuit breakers, and any and all other switchgear, line, and associated equipment; *provided, however*, (a) Seller shall be limited to one such failure during the Delivery Term, and (b) such failure cannot exceed three hundred sixty-five (365) days in duration.

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Ultimate Parent” means NEE.

“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 4.7(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” mean 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 term "including" means "including, without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code, or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified, or reenacted and include references to all bylaws, instruments, orders, and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in U.S. dollars;

(k) words, phrases, or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement, or (ii) do not have well-known and generally accepted meaning in Prudent Operating Practice but that have well-known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; OPTION

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(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 **Option Capacity.** Seller may, within twenty four (24) months of the Effective Date, provide written notice to Buyer of its decision to offer the Option Capacity to Buyer on the same terms and conditions, including the Contract Price, as set forth in this Agreement for the Contract Capacity. Buyer shall have ninety (90) days to determine whether to accept the Option Capacity. If Buyer elects to accept Seller's offer for the Option Capacity, the Contract Capacity shall be adjusted to reflect the addition of the Option Capacity.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility, and Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit B. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, after title and risk of loss thereto has been transferred to Buyer, provided that no such resale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale in the market and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit B, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event affecting Buyer's ability to receive the Product at the Delivery Point, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to Buyer's Fraction of the Facility Energy generated and/or delivered by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to Buyer's Fraction of such Imbalance Energy shall be for the account of Buyer.

3.4 **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 3.4(a) and Sections 3.4(b) and 3.9, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration, and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental

Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.4(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery, and risk of loss mechanisms; and (ii) appropriate allocation of any additional costs to Buyer, as set forth above, provided that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.5 **Capacity Attributes.** Seller will maintain Full Capacity Deliverability Status throughout the Delivery Term.

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

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. On and after the RA Guarantee Date and thereafter throughout the Delivery Term, and subject to Section 3.9, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer from the Facility.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.6 **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 remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Subject to Section 3.9, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the difference, expressed in kW, of (1) the Guaranteed RA Amount for such month, minus (2) the System Resource Adequacy Benefits 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 (the "**RA Shortfall Amount**"), multiplied by [REDACTED]

[REDACTED], provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA 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 H at least seventy-

five (75) days before the applicable CPUC Showing Month for the purpose of monthly RA reporting.

3.7 **CEC Certification and Verification.** Subject to Section 3.9, 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). Subject to Section 3.9, Seller shall 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.

3.8 **California Renewables Portfolio 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 Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16, and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. As used in this Section 3.8(a), "certified by the CEC" means the Facility has received CEC Certification and Verification.

(b) **Transfer of Renewable Energy Credits.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) **Tracking of RECs in WREGIS.** Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

(d) **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.

3.9 **Change in Law.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio

Standard and Capacity Attributes to meet various compliance requirements, that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC, and that Governmental Authorities, including the CEC, CPUC, 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; (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 Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard, provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks, and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying, or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at [REDACTED] (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 shall not be obligated to take any Compliance Actions described in such Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs and expenses that exceed the Compliance Expenditure Cap (such costs and expenses (including lost production, if any), the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions.

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

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

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Delivery Commencement Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Except as otherwise provided herein, Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including, without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges, and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including, without limitation, transmission costs and transmission line losses and imbalance charges. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges and penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit C.

(b) **Green Attributes.** Buyer's Fraction of the Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys Buyer's Fraction of such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

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

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

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the

requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term, and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Available Generating Capacity, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Delivery Term, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly Available Generating Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer or its Scheduling Coordinator with a non-binding forecast of the hourly Available Generating Capacity for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the hourly Available Generating Capacity. These Day-Ahead Forecasts shall be sent to the Scheduling Coordinator. If Seller fails to provide Buyer or its Scheduling Coordinator with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify the Scheduling Coordinator of any changes from the Day-Ahead Forecast of 1 MW or more in Available Generating Capacity whether due to Forced Facility Outage, Force Majeure Event, or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity changes by at least 1 MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer or its Scheduling Coordinator as soon as reasonably possible. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, as applicable, the expected end date and time of such event, and any other information required by CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use best efforts to notify Buyer or its Scheduling Coordinator of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer or its Scheduling Coordinator of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer or its Scheduling Coordinator, provided that Buyer or its Scheduling Coordinator specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event

Buyer or its Scheduling Coordinator fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer or its Scheduling Coordinator.

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

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

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.9, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

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

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Contract Price, in accordance with Exhibit B.

(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh; (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval; and (C) is any penalties assessed to Buyer by CAISO or other charges assessed by CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links, and other equipment and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real-time and intra-day instructions, to operate the Facility in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols, or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order during the time that Seller's facilities, communications links, or other equipment, protocols, or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links, or other equipment, protocols, or practices pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links, or other equipment, protocols, or practices will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.9.

4.5 Reduction in Delivery Obligation.

For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit E:

(a) Facility Maintenance. Unless otherwise agreed, Seller shall provide Buyer with Notice of Planned Outages at least one hundred twenty (120) days prior, provided that (i) no Notice is required for scheduled maintenance or any changes or extensions thereto that do not result in a shutdown of more than ten percent (10%) of the Installed Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) Business Days prior to the expected start date of such scheduled maintenance, and (Y) the requested alternate date is reasonably acceptable to Buyer. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Subject to the foregoing, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility that does not conflict with the availability requirements required pursuant to CPUC D.21-06-035, OP 6, provided that, between June 1 and September 30, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1 to September 30, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing, in each case, performed at Seller's request (any of the scheduled maintenance permitted by this Section 4.5(a), a "Planned Outage").

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

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

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

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

4.6 Availability Guarantee. Seller guarantees that the Facility will be available to produce the Products in accordance with the provisions of Exhibit E.

4.7 WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy purchased by Buyer hereunder are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.8(c), provided that Seller fulfills its obligations under Sections 4.7(a) through 4.7(f) below. In addition:

(a) Prior to the Delivery Commencement Date or as soon as reasonably possible thereafter, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90)-day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, and remains uncured following the later of (i) thirty (30) days after Notice from Buyer thereof, or (ii) ninety (90) days after the Deficient Month, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the applicable Performance Measurement Period. If there is a shortfall of WREGIS Certificates caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.9, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 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.

4.8 **Station Use**. Seller will be responsible for procuring and paying for all necessary retail electricity required to operate the Facility. Energy generated at the Facility may not be used to provide Energy required for Station Use.

4.9 **Interconnection Capacity**. 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 Installed 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 fulfill Seller's obligations under this Agreement, including with respect to Resource Adequacy Benefits, and to allow Buyer to dispatch the Facility in accordance with the CAISO Tariff and as contemplated under this Agreement (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 be responsible for all costs of interconnecting the Facility to the Transmission System.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts, or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date or promptly upon request by Seller to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this Agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Code.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with applicable Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meters, which will be subject to adjustment in accordance with applicable CAISO meter

requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the requirements set forth in Exhibit L. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified, or relocated. In the event Seller breaks a seal outside of normal testing, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and it consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing, and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility. Seller shall obtain and maintain a single CAISO Resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO Resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO Resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO Resource IDs incurred by Seller shall be reimbursed by Buyer.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall deliver an invoice to Buyer for Product no later than fifteen (15) Business Days after the end of the prior monthly delivery period. Each invoice shall (a) reflect 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 delivered to Buyer (if any), the calculation of Facility Energy, Deemed Delivered Energy, and the Contract Price applicable to such Product in accordance with Exhibit B; (b) reflect access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from CAISO, forecast data, and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed

invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on, for any date, the lesser of (x) the per annum rate of interest equal to the prime lending rate published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published) *plus* 2% and (y) the maximum rate permitted by Law (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds 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 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by CAISO; *provided, however*, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the

extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (12)-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 under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any RA Deficiency Amount required to be paid pursuant to Section 3.6, any damages calculated pursuant to Exhibit E, interest, and payments or credits, may be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Performance Security.**

(a) To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer within fifteen (15) Business Days of the Effective Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (a) the Delivery Term has expired or terminated early, and (b) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments, or other damages, are paid in full (whether directly or indirectly, such as through setoff or netting). Within ten (10) Business Days of the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security not allocated to invoiced but unpaid amounts pursuant to this Section 8.7. Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer. The Performance Security shall not be subject to replenishment.

8.8 **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 any of the Performance Security in the form of cash or cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.8):

(a) Exercise any of its rights and remedies with respect to the 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 Performance Security; and

(c) Liquidate all 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.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing and shall be addressed to the Party to be notified at the address set forth on Exhibit I 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 U.S. 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 U.S. mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means), at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the Receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b), or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided on Exhibit I.

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, non-performance, or non-compliance.

(b) Without limiting the generality of the foregoing, except as set forth below, so long as an event otherwise satisfies the definition of a Force Majeure Event, a Force Majeure Event may include an act of God or the elements, including flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, pandemic (including the COVID-19 Pandemic, but only to the extent arising, worsening, or becoming evident after the Effective Date in whole, to an extent, or in a manner not anticipated by the affected Party despite the exercise of reasonable diligence; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy the Product or any component thereof at a lower price, or Seller’s ability to sell the Product or any component thereof at a higher price than under the Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent such event is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to 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 promptly remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. The non-performing Party shall provide the other Party with oral notice of the Force Majeure Event as soon as reasonably practicable thereof, and with written notice within ten (10) Business Days after becoming aware of the impact of such Force Majeure Event, subject in all cases to Seller’s right to observe any safety precautions that it determines are required in connection with such Force Majeure Event, which may prolong a determination of impact. Such notice shall describe in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. The affected Party’s failure to timely provide notice as required by this Section 10.3 shall not prevent it from being excused from the performance of its obligations impacted by the Force Majeure Event, except to the extent that the other Party was actually prejudiced by such

failure. The suspension of performance due to a Force Majeure Event claim must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Delivery Commencement Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; *provided, however*, that Seller shall be entitled to up to an additional six (6) months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12)-month period despite exercising diligent efforts, and (b) Seller provides to Buyer prior to the expiration of the original twelve (12)-month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility; (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12)-month period but is reasonably likely to be restored to operational status within the additional six (6)-month period by Seller's execution of the plan described in this Section 10.4; (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month; and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer or in otherwise resolving the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement except to the extent constituting a separate Event of Default set forth in this Section 11.1, and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the

Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt; or

(v) such Party assigns this Agreement or any of its rights hereunder (or Seller has a Change of Control or Buyer has a direct or indirect change of control) other than in compliance with Article 14; or

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

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;

(ii) if, at the end of the third Contract Year, the Actual Availability is not at least [REDACTED] of the Guaranteed Availability in any Performance Measurement Period;

(iii) if, following the end of the third Contract Year, the Actual Availability in any two (2) consecutive Performance Measurement Periods is not at least [REDACTED] of the Guaranteed Availability;

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

(v) The occurrence of a Letter of Credit Default with respect to any Letter of Credit issued in support of any obligations of Seller under this Agreement or any issuer of any such Letter of Credit; or

(vi) The occurrence of a Guaranty Default with respect to any Guaranty issued in support of any obligations of Seller under this Agreement.

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 ten (10) days after such Notice is deemed to be received and no later than thirty (30) 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 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 Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Termination Payment. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party (as of the Early Termination Date) minus any and all other amounts due from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the 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 Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights and Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN Article 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.6, 4.6, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT E, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE

CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, and Seller or an Affiliate will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows: Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing, and in good standing under the laws of the State of California and the rules, regulations, and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit; (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement); (3) relief by way of injunction, order for specific performance, or recovery of property; (4) attachment of assets; or (5) execution or enforcement of any judgment; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term: 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 the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all federal, state, and local Laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination laws and prevailing wage laws. In addition, Seller shall undertake the community benefit activities set forth in Exhibit J.

13.5 **Diversity Reporting.** Seller shall use commercially reasonable efforts to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire found at https://docs.google.com/forms/d/e/1FAIpQLSeMTkE4HU-_3JhYcXA8dBIatxMznFBE8914hCdgjuxJfYGIEA/viewform, or a similar questionnaire, at the reasonable request of Buyer, but no more than once per calendar year (to be provided within 30 days of the end of such calendar year) and to comply with similar regular reporting requirements related to diversity and labor practices from time to time. A copy of the current version of Buyer's questionnaire is provided in Exhibit K.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution, and delivery of documents in connection with any assignment of this Agreement, including, without limitation, reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement, or in connection with a tax equity financing, an estoppel certificate (in either case, a "**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, (ii) thirty (30) days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure, in the event of a monetary Event of Default and (iii) sixty (60) days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure, in the event of a non-monetary Event of Default. 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 time frame 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;

(d) 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;

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

(f) 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;

(g) If this Agreement is transferred to Lender pursuant to subsection (b) above, Lender, or its designee, must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption, provided that, 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 that 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;

(h) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement 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;

(i) 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;

(j) 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; and

(k) Seller shall pay Buyer's out-of-pocket expenses, including reasonable attorneys' fees, incurred to provide customary consents, estoppels, or other required documentation in connection with Seller's financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks, or obligations under this Agreement.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to a third party, if: The assignee is a Permitted Transferee that is not a Restricted Transferee;

(b) Seller gives Buyer Notice within fifteen (15) Business Days after the date of such proposed assignment or Change of Control;

(c) Except in the case of a Change of Control, Seller has provided Buyer a written agreement or certificate signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment;

(d) Seller has provided Buyer with a certificate signed by the Person to which Seller wishes to assign its interests, certifying that such Person meets the definition of a Permitted Transferee; and

(e) Such transfer or assignment is not in violation of applicable Law.

Notwithstanding the foregoing, neither the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller subsequent to such foreclosure or transfer or assignment in lieu of foreclosure to a Permitted Transferee) shall require Buyer's consent.

14.4 **Buyer Limited Assignment.** Subject to the terms and conditions of this Agreement, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity ("Limited Assignee") that has a Required Credit Rating (as defined in the following sentence) of Buyer's right to receive certain Product (which shall not be for retail sale) and Buyer's obligation to make payments for such Product to the Seller ("Assigned Product").

(a) "**Required Credit Rating**" means, with respect to any Person, if such Person has only one credit rating, then one of the following, or if such Person has two or more credit ratings, at least two of the following: a credit rating of BBB- or higher by S&P; Baa3 or higher by Moody's; and BBB- by Fitch.

(b) The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under the PPA or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement, and shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement with respect to the Assigned Product.

(c) Buyer shall pay Seller for any payments not timely made by Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payment for all amounts due and owing under this Agreement, including the total gross amount due to Seller under each invoice.

(d) Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified in this Agreement. Subject to the foregoing, Buyer may make such an assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment and the proposed form of limited assignment agreement in form and substance substantially in the form attached to this Agreement as Exhibit M, subject to Buyer's, Limited Assignee's and Seller's ability to make the representations and warranties contained therein, and provided that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or its Lenders.

(e) Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to such limited assignment, or (2) Seller's performance of any obligation under the assignment agreement, including without limitation if Seller makes any change to the recipient of the WREGIS Certificates, fails to meet any requirements of this Agreement, then Seller shall not be deemed to be in breach of any obligation in the this Agreement, including without limitation any representation or warranty herein.

(f) Buyer shall reimburse Seller for its out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in connection with any such assignment, or requested assignment consistent with this provision, including in connection with obtaining required consents from its Lenders.

(g) Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any Lender in connection with such limited assignment, including providing any requested acknowledgments with respect to any Collateral Assignment Agreement.

14.5 **Restricted Transferees.** Seller may, from time to time, request that Buyer provide it with a list of Restricted Transferees. Buyer shall respond within ten (10) Business Days of such request, designating any entities that qualify as Restricted Transferees as of such time. For a period of one (1) year from the date of Buyer's response, any entities designated as Restricted Transferees pursuant to this Section 14.5 shall remain Restricted Transferees, and no additional entities will be deemed Restricted Transferees, except upon ninety (90) days' prior Notice from Buyer, provided that Seller or its Affiliate has not already entered into a term sheet or other binding agreement with such entity regarding the Facility. Buyer shall promptly notify Seller if any previously designated Restricted Transferee no longer qualifies as a Restricted Transferee, and Seller may request updates on the status of any Restricted Transferee from time to time.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **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.

15.2 **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.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.** Each Party (the "**Indemnifying Party**") agrees to indemnify, defend, and hold harmless the other Party and its Affiliates, directors, officers, attorneys, employees, representatives, and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (a) a violation of applicable Laws; (b) negligent or tortious acts, errors, or omissions; or (c) intentional acts or willful misconduct in each case by or of the Indemnifying Party, its Affiliates, directors, officers, employees, or agents, excepting only such claims, demands, losses, liabilities, penalties, and expenses to the extent solely caused by the willful misconduct or gross negligence of a member of the Indemnified Party (collectively, "**Indemnifiable Losses**").

16.2 **Claim Notice.**

(a) **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly provide Notice to the Indemnifying Party in writing of any damage, claim, loss, liability, or expense that Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim.**" A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party that was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnifying Party is not obligated to indemnify the Indemnified Party for the increased amount of any Indemnifiable Loss that would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from such Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; *provided, however,* that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect to all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; *provided, however,* that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than five million dollars (\$5,000,000), specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employer's liability insurance shall not be less than 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 limits of one million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned, and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least ten (10) days' prior Notice by Seller in the event of any material modification, cancellation, or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. "Confidential Information" means information, whether oral or written, that is delivered by Seller to Buyer or by Buyer to Seller, including (a) pricing and other commercially sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement; and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available

through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information known to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted. The Parties agree to work in good faith to agree on the scope of such redactions, and Buyer's public disclosure of this Agreement, redacted as agreed between the Parties, shall be in accordance with the requirements of Law and this Article 18.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law or legal process, (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 only such Confidential Information of the Disclosing Party as is so legally required, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Limited Assignee, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality

obligations as those contained in this Agreement or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have consented upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting, or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer, provided that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture, or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers, employees, or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in, or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender.

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

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

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions, or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants, or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. §§ 101–1532.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party, which are not inconsistent with the

provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

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

WIND POWER PARTNERS 1993, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

MARIN CLEAN ENERGY, a California
joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: San Gorgonio Wind Facility

Site includes all or some of the following APNs: Seller shall maintain Site Control throughout the Contract Term and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

County: Riverside County, CA

CEQA Lead Agency:

Type of Facility: Wind Generation Facility

Installed Capacity: 33 MW; *provided, however*, that if Buyer elects to contract for the Option Capacity (if available), the Contract Capacity will increase to 49.5 MW

Maximum Facility Output: 33 MW; *provided, however*, that if Buyer elects to contract for the Option Capacity (if available), the Contract Capacity will increase to 49.5 MW

Interconnection Point: Garnet Substation

Delivery Point: the Facility PNode on the CAISO Grid

PNode: RENWIND_1_N001, GARNET_7_N007; *provided, however*, that if Buyer elects to contract for the Option Capacity (if available), BUCKWND_1_N001 shall be the PNode for such Option Capacity

Participating Transmission Owner: Southern California Edison Company

Schedule 1

List of APNs

[illegible]

EXHIBIT B

COMPENSATION

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

- (a) Contract Price. Buyer shall pay Seller the Contract Price for each MWh of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, up to [REDACTED] of the Expected Energy for each Contract Year.
- (b) Excess Contract Year Deliveries Over [REDACTED]. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year ("**Annual Excess Energy Cap**"), Buyer's SC will sell such excess energy directly to CAISO, on Seller's behalf, at the Real-Time Price. Seller shall be entitled to the net revenues from any such sales. Buyer shall not be required to purchase any energy in excess of the Annual Excess Energy Cap.
- (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 Contract Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be the Real-Time Price, provided that if the Real-Time Price at the Delivery Point is negative for a Settlement Interval with Excess MWh, then no payment would be made from Buyer to Seller.
- (d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Facility Energy or Deemed Delivered Energy during any Curtailment Period, and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap in accordance with paragraphs (a) and (b) of this Exhibit B.
- (e) Tax Credits. The Parties agree that the Contract Price is not subject to adjustment or amendment if Seller fails to receive any Tax Credits; if any Tax Credits expire, are repealed, or otherwise cease to apply to Seller or the Facility in whole or in part; or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting, or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives, Tax Credits during the Contract Term.

EXHIBIT C

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Buyer (or its designated qualified third party) shall be the Scheduling Coordinator and provide Scheduling Coordinator services with CAISO for the Facility for the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the Delivery Commencement Date, (i) Seller shall take all actions and execute and deliver to Buyer and CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Delivery Commencement Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Delivery Commencement Date. On and after the Delivery Commencement Date, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols, and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen (15)-minute market, or real-time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer (as the Facility's SC) and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must-offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer (as the Facility's SC) and CAISO (in order of preference) telephonically or by electronic mail transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect to the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties imposed on Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account except to the extent such Non-Availability Charges are caused by Buyer's (as Scheduling Coordinator) failure to perform its must-offer requirements under Section 40.6 of the CAISO Tariff or caused by Buyer's other actions (as Scheduling Coordinator), in which case such Non-Availability Charges shall be the responsibility of Buyer and for Buyer's account. In addition, if,

during the Delivery Term, CAISO implements or has implemented any sanction or penalty related to scheduling requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder), outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

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

(e) Dispute Costs. Buyer (as the Facility's SC) may be required to dispute CAISO settlements in respect to the Facility. Buyer agrees to pay costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes, except to the extent they relate to CAISO charges payable by Seller under this Agreement with respect to the Facility.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to CAISO (and to Buyer) that is required for CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT D

RESERVED

EXHIBIT E

GUARANTEED AVAILABILITY

Section 1 Definitions.

Capitalized terms used in this Exhibit E and not defined in this Exhibit will have the meaning assigned in Section 1.1 of the Agreement.

“Actual Availability” means, with respect to any Performance Measurement Period, the percentage of time in such Measurement Period during which the Project is interconnected to the Interconnection Facilities and is capable of generating or delivering Energy, regardless of the quantity of generated or delivered Energy, which shall be expressed as a percentage equal to (a) one hundred (100), multiplied by (b) the sum of the Available Intervals for each wind turbine in such Measurement Period, divided by (c) the product of (i) the sum of the Settlement Intervals in such time period, and (ii) the number of wind turbines.

“Annual Report” is defined in Section 2.2 of this Exhibit.

“Availability Damages” is defined in Section 2.1 of this Exhibit.

“Available Intervals” mean (a) the number of Settlement Intervals during a Performance Measurement Period in which a Project wind turbine was electrically interconnected to the Interconnection Facilities, plus (b) Excused Intervals in the applicable Performance Measurement Period. Available Intervals are counted by the SCADA System.

“Deemed Generated Energy” means the quantity of Energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Project without curtailment during the relevant measurement period, as estimated based on the observed thirty (30)-second average wind speeds multiplied through the power curve of the Projects’ site meter, which results in thirty (30)-second average potential power values integrated over the relevant measurement period, or if such equipment or data is unavailable during a relevant interval, then using other available data or interpolated data determined in accordance with Prudent Operating Practices.

“Excused Intervals” mean those Settlement Intervals during which Seller is unable to schedule or deliver Energy to the PNode as a result of a (i) Curtailment Order, (ii) a Buyer Curtailment Order, (iii) a System Emergency (other than a System Emergency caused by Seller’s breach of the Interconnection Agreement), (iv) a Force Majeure Event, (v) outages for CAISO or the Participating Transmission Owner network upgrades impacting the Interconnection Facilities, or a (vi) Transformer Failure.

“Maximum Availability Damages” means an amount equal to [REDACTED] per MW of Contract Capacity.

“Performance Measurement Period” means each two (2) consecutive Contract Years during the Delivery Term.

“Replacement Green Attributes” mean Renewable Energy Credits of the same Portfolio

Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same time frame 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 Price” means for the Contract Year, the sum of (a) the weighted average of the Integrated Forward Market hourly price for all hours in the Performance Measurement Period, as published by CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point weighted by hourly and monthly Facility Energy volumes where available and by Deemed Generated Energy in periods with Facility Energy volumes are not available; plus (b) the market value of Replacement Green Attributes, as determined by taking the average of three dealer quotes representing a live bid to purchase such Replacement Green Attributes associated with the energy generated from any renewable energy generation facility in CAISO and of the equivalent vintage as the applicable Contract Year(s) for which Replacement Green Attributes is being determined.

Section 2 Availability Guarantee.

2.1. Availability Damages. Seller will cause the Project to achieve the Guaranteed Availability for each Measurement Period. For any Measurement Period during which the Project fails to achieve the applicable Guaranteed Availability, Seller shall pay to Buyer liquidated damages equal to (a) the difference of the Guaranteed Availability less the Actual Availability, multiplied by (b) the Replacement Price less the Contract Price, and by (c) the Expected Energy (the “**Availability Damages**”); provided, however, that in no event shall Availability Damages in the aggregate for the Term exceed the Maximum Availability Damages.

2.2. Annual Report. No later than thirty (30) days after each Performance Measurement Period, Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Availability of the Project for the previous Performance Measurement Period and the Availability Damages, if any, due to Buyer (the “**Annual Report**”). If a payment is due from Seller, Seller will pay such damages within forty-five (45) days after the end of the Performance Measurement Period for which Availability Damages are owed.

EXHIBIT F

FORM OF LETTER OF CREDIT

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

DATE OF ISSUANCE:

[Date of issuance]

Marin Clean Energy (“Beneficiary”)
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Director of Finance

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of **NextEra Energy Capital Holdings, Inc.** on behalf of **Windpower Partners 1993, LLC**, located at 700 Universe Boulevard, Juno Beach, Florida 33408 (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraph 5 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain Renewable Power Purchase Agreement dated as of _____.

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit shall be *[written dollar amount]* United States Dollars (US\$*[dollar amount]*) (such maximum amount referred to as the “Stated Amount”).

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at *[bank address]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 below), or as a PDF attachment to an email to *[bank email address]*. Transmittal by email shall be deemed delivered when received. The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Draw Certificate and Draft by Beneficiary hereunder in order to receive payment.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such

address by 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice not later than two Business Days that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-submit on or before the then current expiry date.

5. **Expiration, Initial Period and Automatic Extension.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 8*) that we elect not to consider this Letter of Credit extended for any such additional one year period. Notwithstanding the foregoing extension provision, this Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any). Upon receipt by you of such notice of non-extension, you may draw hereunder up to the available amount, on or before the then current expiry date, against presentation to us of your draft substantially in the form of *Attachment B* hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such).

6. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

7. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND AS TO MATTERS NOT ADDRESSED IN ISP98, BY THE LAWS OF THE STATE OF NEW YORK. **WE ARE SUBJECT TO VARIOUS LAWS, REGULATIONS AND EXECUTIVE AND JUDICIAL ORDERS (INCLUDING ECONOMIC SANCTIONS, EMBARGOES, ANTI-BOYCOTT, ANTI-MONEY LAUNDERING, ANTI-TERRORISM, AND ANTI-DRUG TRAFFICKING LAWS AND REGULATIONS) OF THE U.S. AND OTHER COUNTRIES THAT ARE ENFORCEABLE UNDER APPLICABLE LAW. WE WILL NOT BE LIABLE FOR OUR FAILURE TO MAKE, OR OUR DELAY IN MAKING, PAYMENT UNDER THIS LETTER OF CREDIT OR FOR ANY OTHER ACTION WE TAKE OR DO NOT TAKE, OR ANY DISCLOSURE WE MAKE, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT THAT IS REQUIRED BY SUCH LAWS, REGULATIONS, OR ORDER.**

8. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

9. **Irrevocability.** This Letter of Credit is irrevocable.

10. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

Sincerely,

[ISSUING BANK]

By: _____

Title: _____

Address:

ATTACHMENT A

FORM OF DRAW CERTIFICATE

TO: [ISSUING BANK]

[Address]

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$ _____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The reasons for a drawing by Beneficiary are pursuant to that certain **Renewable Power Purchase Agreement dated as of _____**.
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____

Title: _____

Date: _____

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. _____

TO: [ISSUING BANK]

[Address]

Date:

PAY TO: [BENEFICIARY]

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.
_____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

TO: [ISSUING BANK]
[Address]

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT G
FORM OF GUARANTY
GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by NEXTERA ENERGY CAPITAL HOLDINGS, INC. (“**Guarantor**”), in favor of Marin Clean Energy, a California joint powers authority (“**Counterparty**”).

RECITALS:

- A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [_____] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain *[Insert Name of Agreement]* [dated/made/entered into/effective as of] _____, 20__ (the “**Agreement**”); and
- B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees as primary obligor and not as a surety, the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”).
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to

Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**").

- (b) Guarantor's obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- (c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves the right to assert for itself in a subsequent proceeding all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

- (a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; and

- (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof, and (iv) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release any person (other than Obligor or Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.
7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.
8. **TERMINATION.** This Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement or (ii) 11:59:59 Eastern Prevailing Time [_____, ____]; *provided, however*, that no such termination shall affect Guarantor's liability with respect to any Obligation incurred prior to the time the termination is effective, which Obligation shall remain subject to this Guaranty.
9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
NEXTERA ENERGY CAPITAL HOLDINGS, INC. 700 Universe Blvd. Juno Beach, Florida 33408 <u>Attn:</u> Treasurer	_____ _____ _____ <u>Attn:</u> _____
[Tel: (561) 694-6204 -- for use in	[Tel: () - -- for use in

<i>connection with courier deliveries]</i>	<i>connection with courier deliveries]</i>
--	--

- * *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. (561) 625-7504 and ATTN: Credit Department, Fax No. (561) 625-7642. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each 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.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE

RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

NEXTERA ENERGY CAPITAL
HOLDINGS, INC.

By: _____

Name: _____

Title: _____

EXHIBIT H**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by Wind Power Partners 1993, LLC, a Delaware limited liability company (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

WIND POWER PARTNERS 1993, LLC
a Delaware limited liability company

By: _____

Printed Name: _____

Title: _____

EXHIBIT I**NOTICES**

Wind Power Partners 1993, LLC (“Seller”)	Marin Clean Energy (“Buyer”)
All Notices: 700 Universe Blvd. Juno Beach, FL Attn: Wind Power Partners 1993, LLC c/o Business Management Email: dl-bmo-west-caiso@nexteraenergy.com	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Reference Numbers: Duns: <i>To be provided prior to the Delivery Commencement Date</i> Federal Tax ID Number: <i>To be provided prior to the Delivery Commencement Date</i>	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Wind Power Partners 1993, LLC c/o Business Management Phone: 561-691-2816 Email: dl-bmo-west-caiso@nexteraenergy.com	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: Wind Power Partners 1993, LLC c/o Business Management Phone: 561-691-2816 Email: dl-bmo-west-caiso@nexteraenergy.com	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Wind Power Partners 1993, LLC c/o Business Management Phone: 561-691-2816 Email: dl-bmo-west-caiso@nexteraenergy.com	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Wind Power Partners 1993, LLC c/o Business Management Phone: 561-691-2816 Email: dl-bmo-west-caiso@nexteraenergy.com	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: BNK: <i>To be provided prior to the Delivery Commencement Date</i> ABA: <i>To be provided prior to the Delivery Commencement Date</i> ACCT: <i>To be provided prior to the Delivery Commencement Date</i>	Wire Transfer: [REDACTED]

Wind Power Partners 1993, LLC (“Seller”)	Marin Clean Energy (“Buyer”)
With additional Notices of an Event of Default to: Attn: Wind Power Partners 1993, LLC c/o General Counsel Email: NEER-general-Counsel@nexteraenergy.com	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@ hallenergylaw.com
Emergency Contact: Attn: Wind Power Partners 1993, LLC c/o Business Management Phone: 561-691-2816 Email: dl-bmo-west-caiso@nexteraenergy.com	Emergency Contact: Attn: <i>To be provided prior to the Delivery Commencement Date</i> Phone: <i>To be provided prior to the Delivery Commencement Date</i> Email: <i>To be provided prior to the Delivery Commencement Date</i>

EXHIBIT J

COMMUNITY BENEFIT

Buyer is a not-for-profit public agency whose core mission includes local investment in the communities that it serves. Seller pledges to contribute one hundred thousand dollars (\$100,000) and one hundred (100) hours of employee time to various community benefit initiatives that directly benefit stakeholders in Buyer's service territory. Seller agrees to make this payment of one hundred thousand dollars (\$100,000) within sixty (60) days after the Delivery Commencement Date. Such funds will be utilized for community benefit initiatives only, which may include programs focused on housing, education, workforce training, and environmental stewardship/habitat improvement. Seller will consult with Buyer to identify community benefit initiatives that are of mutual interest.

EXHIBIT K

DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

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

*** Required**

1. Email address *

2. Business Name *

3. Where is your business located/headquartered? *

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

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com

Mark only one oval.

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

10/9/2020

MCE Supplier Diversity Questionnaire

5. If you answered "yes" or "qualified but not certified", under which categories?
Please choose all that apply. *

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

Check all that apply.

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

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

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

Check all that apply.

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

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

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

8. If certified, current annual revenue:

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

Check all that apply.

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

<https://docs.google.com/forms/d/12VVqgNBag7WV2gwoza3lVY0dqfeGTegz9U-q63osn6Q/edit>

4/11

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

5/11

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

Subcontractors

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

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

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

10/9/2020

MCE Supplier Diversity Questionnaire

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. ; \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

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

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

Labor Agreements

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

10/9/2020

MCE Supplier Diversity Questionnaire

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? *

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

Check all that apply.

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

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

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

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MCE Supplier Diversity Questionnaire

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

18. Does your business pay workers prevailing wage rates or the equivalent? *

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html

Mark only one oval.

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

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

Mark only one oval.

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

10/9/2020

MCE Supplier Diversity Questionnaire

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

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

Equity, Diversity,
Inclusion, and Justice

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

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

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

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

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MCE Supplier Diversity Questionnaire

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Google Forms

EXHIBIT L

METERING

Seller may add meters or move meters to different locations based on final design of the Facility, so long as the metering provisions of this Agreement and the Interconnection Agreement can be complied with, such changes are consistent with the requirements of the CAISO Tariff, and such metering changes do not affect the measurement or calculation of Facility Energy, Electrical Losses, and Station Use as required under this Agreement. Subject to the foregoing requirements, any such changes shall not be deemed to be inconsistent with this Exhibit L.

EXHIBIT M

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] (the “**Limited Assignment Agreement Effective Date**”) by and among Wind Power Partners 1993, LLC, a Delaware limited liability company (“**PPA Seller**”), Marin Clean Energy, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**Limited Assignee**”), and relates to that certain PPA defined in Appendix 1 hereto. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer, and Limited Assignee (collectively, 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 product(s) described in Appendix 1 (collectively, the “**Assigned Product**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section in 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 additional Assigned Product in excess of the limit, if any, set forth in Appendix 1.
- (b) PPA Buyer hereby delegates to Limited Assignee the obligation to pay for all Assigned Product that is actually delivered to Limited Assignee pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, including without limitation obligations with respect to payment for any Product which is not included in the Assigned Product, any additional Assigned Product, and any other amounts owed under the PPA. The Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period, which invoice shall show the total gross amount due to PPA Seller under the PPA for such time period (the “**Subject Gross Amount**”). Limited Assignee and PPA Buyer may retain a custodian to administer the payments owed to PPA Seller during the Assignment Period (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); provided, however, that such retention shall not reduce or affect the obligations of PPA Buyer and Limited Assignee hereunder or under the PPA or excuse any non-compliance therewith. PPA Buyer and Limited Assignee covenant and agree to instruct the custodian to pay the Subject Gross Amount to PPA Seller on or before the applicable payment date in the PPA. PPA Buyer and Limited Assignee may agree in a separate writing as to the allocation of the Subject Gross Amount between PPA Buyer and Limited Assignee of

amounts paid by the custodian to PPA Seller hereunder; provided, however, at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including under any invoice. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, and shall remain so responsible to make such payments by the times and on the terms set out in the PPA in the event that either (i) Limited Assignee does not make the payments to the custodian as described above or (ii) the custodian does not make the payments to the PPA Seller. To the extent Limited Assignee fails to pay for any Assigned Product by the due date for payment set forth in the PPA, PPA Buyer agrees that it remains responsible for such payment, and in order to avoid a Buyer Event of Default pursuant to PPA Section 11.1(a)(i) such payment shall be made by it within ten (10) Business Days of receiving notice of such non-payment from PPA Seller.

- (c) Limited Assignee hereby accepts and agrees, and PPA Seller hereby consents, to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Product 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 during the Assignment Period (i) title to Assigned Product will pass from PPA Seller to Limited Assignee upon delivery by PPA Seller of Assigned Product 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) PPA Buyer will forward copies to Limited Assignee of annual forecasts and monthly forecasts of Facility Energy provided pursuant to Sections 4.3(a) and 4.3(b) of the PPA; (v) PPA Buyer will forward 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 ten (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 (vi) PPA Buyer shall promptly reimburse PPA Seller for any additional costs or expenses incurred by PPA Seller as a result of this subsection (d).
- (e) PPA Seller acknowledges that PPA Buyer and Limited Assignee have advised PPA Seller that (i) Limited Assignee intends to immediately transfer title to any Assigned Product received from PPA Seller through one or more intermediaries such that all Assigned Product will be re-delivered to PPA Buyer, and (ii) Limited Assignee has the right to purchase receivables due from PPA Buyer for any such Assigned Product. To the extent Limited Assignee purchases any such receivables due from PPA Buyer, Limited Assignee may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation; provided, however, that (A) at no time shall PPA Seller be required to pay Limited Assignee for any amounts by which any such receivables exceed any Delivered Product Payment Obligation, (B) any such application by Limited Assignee shall not affect any amounts due and owing under the PPA, including under any invoice, and

- (C) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA, including the Subject Gross Amount due to PPA Seller under each invoice.
- (f) Notwithstanding anything to the contrary herein, nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA, including with respect to CAISO revenues and costs.
- (g) Notwithstanding anything to the contrary in this Assignment Agreement including without limitation Section 1(f) and Section 6(i) hereof, the Parties hereby agree that if (1) the assignment, transfer or conveyance of the Assigned Product pursuant to this Assignment Agreement, or (2) PPA Seller's performance of any obligation under this Assignment Agreement, including without limitation if PPA Seller makes any change to the recipient of the WREGIS Certificates including without limitation pursuant to the extent (if any) of any instructions of PPA Buyer, Limited Assignee, and/or PPA Buyer and Limited Assignee set forth in Appendix 1, fails to meet any requirements of the PPA, then PPA Seller shall not be deemed to be in breach of any obligation in the PPA, including without limitation any representation or warranty therein.
- (h) At least three (3) Business Days before the commencement of the Assignment Period, The Goldman Sachs Group, Inc. (the "**Guarantor**") will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 2 attached hereto (the "**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; provided, however, that PPA Seller's rights under the Guaranty and this subsection (h) shall not reduce or affect PPA Buyer's obligation to render payments when due under the PPA or extend any deadlines in the PPA

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 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(a)(iv) of the PPA occurs with respect to Limited Assignee (or any entity providing a parent guaranty on behalf of Limited Assignee);
 - (4) delivery of a written notice by Limited Assignee if any of the events described in Section 11(a)(iv) of the PPA occurs with respect to PPA Seller;

- (5) failure of the Guaranty provided by Guarantor to PPA Seller hereunder to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of J. Aron hereunder or if Guarantor provides notice of termination of the Guaranty or otherwise repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or
 - (6) neither Limited Assignee nor the Guarantor maintains a Required Credit Rating.
- (b) The Assignment Period will end at the end of the last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), 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) or (a)(2) above. All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration 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 (subject to PPA Buyer's obligations to pay amounts due under the PPA as specified therein and in this Assignment Agreement), 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.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the Delivery Term or the PPA. All Assigned Rights and Obligations shall revert from Limited Assignee to PPA Buyer upon the expiration of or early termination of the Delivery Term or the PPA, 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 (subject to PPA Buyer's obligations to pay amounts due under the PPA as specified therein and in this Assignment Agreement), 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. PPA Seller and the PPA Buyer represent and warrant to Limited Assignee, as of the Assignment Agreement Effective Date, that (a) the PPA is in full force and effect; and (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. Limited Assignee represents and warrants to PPA Seller, as of the Assignment Agreement Effective Date, that Guarantor has a Required Credit Rating.

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 Buyer agrees 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:

J. Aron & Company LLC 200

West Street
New York, New York 10282-2198
Email: gs-prepay-notices@gs.com

5. Costs and Expenses. Each of PPA Buyer and Limited Assignee will each pay its own costs and expenses (including legal fees) incurred in connection with this Assignment Agreement and as a result of the negotiation, preparation, and execution of this Assignment Agreement. PPA Buyer shall reimburse PPA Seller for its out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in connection with this Assignment Agreement, including in connection with obtaining required consents from its lenders or other financing parties, as well as reimburse PPA Seller as set forth above in Section 1(d) of this Assignment Agreement.

6. Miscellaneous. Article 12 (Limitation of Liability and Exclusion of Warranties), Sections 13.2(e) and 13.2(f) and (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) 19.8 (Electronic Delivery), 19.9 (Binding Effect), and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein. For avoidance of doubt, and notwithstanding anything to the contrary in this Assignment Agreement: (i) except to the limited extent specified in Section 1(g) of this Assignment Agreement, nothing in this Assignment Agreement shall modify any provision of the PPA; (ii) PPA Buyer remains obligated to perform all its obligations under the PPA notwithstanding the limited assignment under this Assignment Agreement (including without limitation any such obligations not timely performed by Limited Assignee under this Assignment Agreement), and any failure by Limited Assignee to make payments to PPA Seller as provided in this Assignment Agreement when due under the PPA shall be a Buyer Event of Default under the PPA if not cured within the applicable cure period specified in Section 11.1(a)(i) of the PPA; (iii) this Assignment Agreement shall not purport to convey or otherwise allege any right of PPA Buyer or Limited Assignee to make any prepayment to Seller under the PPA or to file or impose any lien on the Facility; (iv) 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; and (v) neither Limited Assignee nor PPA Buyer shall make any assignment of its rights or delegation of its obligations under this Assignment Agreement without the prior written consent of PPA Seller, which it may withhold in its sole discretion.

7. U.S. Resolution Stay Provisions. If each of the Parties hereto have not adhered to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the "**ISDA U.S. QFC Protocol**"), the terms of the ISDA U.S. QFC Protocol shall be incorporated into and form a part of this Assignment Agreement. For purposes of incorporating the ISDA U.S. QFC Protocol, each Party shall be deemed to have the same status as "Regulated Entity" and/or "Adhering Party" (as such terms are defined therein) applicable to it under the ISDA U.S. QFC Protocol and this Assignment Agreement shall be deemed to be a "Protocol Covered Agreement" (as defined therein).

8. Governing Law, Jurisdiction, Waiver of Jury Trial

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 reference to any conflict-of-law provisions that would direct the application of another jurisdiction's laws.

- (a) **Jurisdiction.** Each Party submits to the exclusive jurisdiction of 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.
- (b) **Waiver of Right to Trial by Jury.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT AGREEMENT.

[Remainder of Page Intentionally Blank]

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

WIND POWER PARTNERS 1993, LLC

MARIN CLEAN ENERGY

By:

Name:

Title:

By:.....

Name:

Title:

J. ARON & COMPANY LLC

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” means that certain Renewable Power Purchase Agreement, dated [_____], by and between Marin Clean Energy and Wind Power Partners 1993, LLC, a Delaware limited liability company, as amended from time to time.

“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 2 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.

Assigned Product: [PPA Buyer’s Fraction of the Facility Energy and Green Attributes (Portfolio Content Category 1)]

Further Information: PPA Seller shall transfer the WREGIS Certificates pursuant to Section 4.7 of the PPA. All Assigned Product delivered by PPA Seller to Limited Assignee shall be a sale made at wholesale, with Limited Assignee reselling all such Assigned Product.

Appendix 2

Form of GSG Guaranty

, 2023

NAME
ADDRES
S

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “Guarantor”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “Company”), to **COUNTERPARTY NAME** (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Marin Clean Energy, dated as of [____], 2023. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the guaranteed obligations, or interest thereon is rescinded or must otherwise be restored or returned by the Counterparty upon the bankruptcy, insolvency, dissolution or reorganization of the

Company. No failure on the part of the Counterparty to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

The Guarantor hereby represents as follows:

- (a) The Guarantor is duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Guaranty.
- (b) The execution and delivery of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of the Guarantor's certificate of incorporation or by-laws, as amended to date, or any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on the Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder.
- (c) All consents, licenses, clearances, authorizations, and approvals of, and registration and declarations with, any governmental or regulatory authority necessary for the due execution and delivery of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental or regulatory authority is required in connection with the execution or delivery of this Guaranty.

This Guaranty constitutes the legal, valid, and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with all of its terms and conditions (subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally). The enforceability of the Guarantor's obligations is also subject to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK

WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____

Authorized Officer



February 2, 2023

TO: MCE Technical Committee

FROM: Justin Kudo, Senior Strategic Analysis and Rates Manager

RE: Adjustments to MCE Net Surplus Compensation (Agenda Item #08)

ATTACHMENTS: Draft Amended MCE Net Energy Metering Tariff (Redline)

Dear Technical Committee Members:

Summary:

Staff proposes revisions to the Net Surplus Compensation (NSC) and Cash-Out process of MCE's Net Energy Metering¹ (NEM) tariff, last modified by your Board in 2019. The Cash-Out is an annual process where customers who generate more energy than they use receive an NSC payment. Approximately 2.8% of MCE customers received NSC in 2022, with an average payment of \$171.

Note: This adjustment is unrelated to the recent CPUC approval of the Net Billing Tariff (NBT), also known colloquially as NEM 3.0. Staff is currently not proposing wholesale changes to our NEM tariff related to the implementation of the NBT, and notes that the NBT is not planned to be implemented by PG&E until December of this year.

The proposed revisions to MCE's NEM tariff are as follows:

1. Change the methodology under which the NSC is calculated, to mitigate unintended impacts resulting from current unusually high energy prices while still supporting solar customers;
2. Change the threshold at which a check will be automatically issued to \$200 (from \$50); amounts under \$200 would be handled through an on-bill credit.
3. Clarify how MCE will manage outstanding NSC payments to customers resulting

¹ Net Energy Metering is a billing mechanism used to credit customers for surplus generation towards future usage. While primarily composed of solar customers, it also can include customers with their own wind, biogas, or other qualifying renewable generation facilities.

from unclaimed funds.

4. Remove extraneous language regarding municipal accounts during the 2020-2021 Cash-Out period.

Net Surplus Compensation (NSC):

AB 920 (Huffman) required that utilities pay customers for surplus electricity generated annually, based on the value of that electricity delivered to the utility. The California Public Utilities Commission (CPUC) directed that investor-owned utility NSC be calculated based on the average value of electricity during solar generating hours over the annual period.

In 2019, your Board approved setting NSC rates to be double the prevailing utility NSC rate with a maximum payment of \$5,000. Since then, energy costs have increased rapidly and, based on the current methodology, MCE's NSC rate in May 2023 would increase by more than 260%. To ensure payments remain more reasonably close to energy value during periods of market fluctuations, staff proposes an NSC adder of \$0.02/kWh. This would result in an updated forecast NSC of \$0.091/kWh, which is the same rate used during last year's Cash Out.

Cash Out Period	MCE Net Surplus Compensation Rate	Cash-Out Total
May 2020-21	\$0.054/kWh	\$1,361,861
May 2021-22	\$0.091/kWh	\$2,785,750
May 2022-23 (forecast based on current methodology)	\$0.141/kWh	\$4,287,368 ²
May 2022-23 (forecast based on proposed methodology)	\$0.091/kWh	\$2,785,750

On-Bill Payment Thresholds:

The current MCE NEM tariff places a \$50 threshold for checks to be issued to customers; NSC payments under this threshold are made as an on-bill credit. This results in an enormous number of check payments which must be issued annually: in 2022, MCE issued 11,740 Cash-Out checks to customers.

Staff proposes to raise the threshold for a check to be issued to \$200; had this been set during the May 2022 Cash-Out, MCE would have issued 7,332 less checks and included them as on-bill credits instead.

Reducing the number of checks issued has four key benefits to customers and MCE operations:

1. Customers do not always cash the checks issued by MCE; automatic application

² Based on net surplus energy totals from the 2022 Cash-Out and current NSC calculation.

of these credits to customer bills better ensures that payments are received and utilized by customers.

2. MCE must track which checks have not been cashed and follow-up on these balances; limiting such instances would reduce administrative burden.
3. Issuance of thousands of checks each May is operationally burdensome and MCE must pay a service fee for each check. Additional fees are required for reissued checks when they are not cashed or when the recipient has moved/changed addresses.
4. Under updated PG&E billing procedures, on-bill credits are treated as cash payments on customer bills. Credits provided by MCE are automatically applied to other utility charges, and customers can request a payment from PG&E of excess credit balances.

Unclaimed NSC Payments:

When customers close their MCE account, either by closing their PG&E account or opting out of MCE service, they may do so with credits remaining on their PG&E account. These credits are subject to forfeiture and have no value themselves. Customers may request any remaining MCE credits to be converted to NSC, within three months of account closure, if they qualify (i.e., if generated kWh exceeds consumed kWh). This request also enables MCE to receive updated contact information on where the payment can be sent.

Staff proposes the following process for handling uncashed checks:

1. If a NEM cash-out check is not cashed within 90 days of issuance, at which point it is no longer valid, MCE will cancel the payment and reissue upon customer request.
2. If the account is still active with MCE, staff will reach out to the customer and offer to make a replacement payment.
3. If the balance remains unclaimed, MCE will follow the requirements of California Government Code Section 50050-50057 et. seq. regarding unclaimed funds.

Fiscal Impacts: If the recommendation is approved, NSC payments would decrease by approximately \$1,501,618 in the current fiscal year. Reductions in check issuance fees would reduce MCE costs by approximately \$11,000. Other changes may have de minimis impacts on MCE revenues and indirect benefits through reduced administrative tasks.

Recommendation: Adopt the amended MCE Net Energy Metering Tariff provided in the Attachment.



ELECTRIC SCHEDULE NEM - NET ENERGY METERING TARIFF

Effective Date: ~~March 26, 2020~~ February 3, 2023

~~NSC last updated: April 1, 2022~~

APPLICABILITY: This net energy metering (NEM) schedule is applicable to customers operating an eligible Renewable Electrical Generation Facility, as defined in PG&E's Electric Schedule NEM or NEM2. This rate schedule is available on a first-come, first-served basis to customers that provide PG&E with a completed PG&E NEM Application and comply with all PG&E NEM requirements as described in PG&E Electric Schedule NEM, NEM2, and other related NEM programs. This includes customers served by NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation), Multiple Tariff facilities, and any other forms of Net Energy Metering as defined by PG&E Electric Schedules NEM and NEM2.

RATES: All rates charged under this tariff will be in accordance with the eligible customer-generator's Otherwise-Applicable MCE rate Schedule (OAS). An eligible customer-generator served under this schedule is responsible for all MCE charges from its OAS including demand charges, Deep Green surcharges, taxes, and all other charges owed to MCE. Charges or credits for energy (kWh) supplied or delivered to MCE will be based on the net metered usage in accordance with this tariff.

PG&E NEM tariffs and rates still apply – MCE customers will continue to be subject to the terms, conditions, and billing procedures of PG&E for services other than electric generation.

BILLING: Customers with NEM service will be billed as follows:

a) Monthly Settlement of MCE Charges/Credits:

1. "Net Electric Consumption" is defined as when customer energy usage exceeds production during any billing segment, and shall be billed in accordance with applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.
2. "Net Electric Generation" is defined as when customer energy generation exceeds usage during any billing segment, and shall be credited in consideration of the applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.
3. Any charges due for Net Electric Consumption will be assessed in each monthly statement. If the customer's account has available credits from current or previous Net Electric Generation, these credits will be applied against usage charges first before any charges are assessed.

4. Any excess Net Electric Generation credits will be tracked by MCE on the customer's bill as a credit, and will be applied to future billing cycles within the same MCE Annual True-Up period as defined below.
5. Credit balances do not have any cash value except as defined in the Cash-Out process below.

b) MCE Annual Cash-Out and True-Up:

1. Following the final date and bill for each customer's March-April billing cycle, MCE will initiate a true-up of each customer account's NEM balance. Any accrued credit balance will be reset to zero for the beginning of the next 12-month period.
2. A review will be conducted for each customer's kilowatt-hour consumption and production during the annual true-up. If the customer's account produced more electricity than it consumed, it is eligible for a Cash-Out payment at the Net Surplus Compensation (NSC) rate.
3. The "Net Surplus Compensation" rate is intended to reflect two ~~times (2X)~~ cents above the average wholesale rate during solar generating hours over a 12-month period as determined by MCE.
4. The NSC rate will be updated as part of MCE's rate setting process, with consideration for market factors and comparable rates.

~~a. The NSC rate is set at \$0.091/kWh as of April 1, 2022.~~

5. NSC payments are subject to a cap of \$5,000 per account annually.
6. Customers will receive NSC Cash-Out payments automatically, in the form of an on-bill credit or paid by check. ~~issued to the customer's mailing address on their PG&E account. Credit balances of less than \$50 will instead be added to the customer's new account balance. Payments less than or equal to \$200 will be credited to the customer's PG&E account balance. Payments greater than \$200 will be issued by check to the customer's mailing address as noted on their PG&E account.~~
7. If a Cash-Out check is not cashed within 90 days of issuance, the payment will be canceled. If the account is still active, MCE will attempt to contact the customer and make a replacement payment available.
- ~~6-8. If Cash-Out payments remain unclaimed, MCE will follow the requirements of Government Code Section 50050-50057 et. seq. regarding the handling of unclaimed funds.~~

c) Customers Returning to PG&E Bundled Service and Account Closures:

1. MCE customers with NEM service may opt-out and return to PG&E bundled service at any time, subject to MCE and PG&E's terms and conditions for return to bundled service. Customers are advised that PG&E will perform a True-Up of their account for any PG&E charges at the time of return to PG&E bundled service.

2. Customers returning to PG&E service or closing their PG&E account may request a review of their account for ~~NSC~~Cash-Out payment. This settlement will follow the MCE Annual Cash-Out and True-Up process as defined in Sections (b)~~(2) through (b)(4)~~, and be issued as a check to the address provided by the customer.

2.3. Customers returning to PG&E service or closing their PG&E account must request a review for cash-out payments within 90 days of the end of their MCE service, or payments will be subject to forfeiture.

d) Aggregated NEM

1. Per the California Public Utilities Code Section 2827(h)(4)(B), aggregated NEM customers are “permanently ineligible to receive net surplus electricity compensation.” MCE’s aggregated NEM accounts are ineligible to receive NSC payments.

e) Municipal Accounts

~~f) During the 2020-2021 cycle that results in an April 2021 MCE Cash-Out and true-up, municipal customers will receive a transitional Cash-Out payment instead of the process defined in Section~~

~~g) (b). This transitional payment will be equivalent to the greater of: a) 50% of available retail credit or; b) 100% of retail credit subject to a maximum of \$5,000. After the April 2021 Cash-out, credit balances for each customer will be reset to zero for the start of the next 12-month period.~~

~~h)e) Subsequent MCE Cash-Out and true-ups for municipal accounts will be billed according to the standard process defined in Section (b).~~